WHY PENALTIES ARE ILLEGAL FOR ANYTHING BUT GOVERNMENT FRANCHISEES, EMPLOYEES, CONTRACTORS, AND AGENTS

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1 Introduction

The Internal Revenue Service (IRS) is fond of attempting to institute penalties against people for any of the following more common occasions:

1. Frivolous returns.
2. Late returns.
3. Late payment of penalties.
4. Inaccurate returns.

What few Americans realize is that there is simply no legal authority for them to institute such penalties in many if not most cases. This memorandum of law will analyze legal authority to institute penalties in the context of the Internal Revenue Code, and will show more importantly, circumstances in which such penalties are illegally imposed.

This memorandum is intended to be attached to your response to IRS penalty collection notices. We will close this memorandum with a series of admissions for readers who are still unconvinced by the content of the conclusions documented. The purpose of these admissions will be to offer the reader an opportunity to refute the overwhelming evidence supporting everything in this pamphlet.

2 IRS Has NO Legal Authority to Assess Administrative Penalties on Subtitles A and C Income Taxes on Natural Persons

> *"By the blessing of God, may our country become a vast and splendid monument, not of oppression and terror, but of wisdom, of peace, and of liberty upon which the world may gaze with admiration forever."*
> *[First Bunker Hill Oration, Daniel Webster; Inscribed on a bronze plaque on the quarterdeck of the USS Bunker Hill, CG-52]*

The Congress and the 50 state governments are prohibited by the Constitution from imposing any kind of punishment or penalty against natural persons without a judicial proceeding. This includes financial penalties associated with ensuring compliance with the Internal Revenue Code. This requirement derives from the U.S. Constitution, which in Articles 1, Section 9, Clause 3 prevents Congress from passing any kind of Bill of Attainder law. Likewise, Article 1, Section 10, Clause 1 applies the same requirement to the 50 Union states. Below is the Constitutional restriction:

> ***Article 1, Section 9, Clause 3:*** *"No Bill of Attainder or ex post facto Law shall be passed." (with respect to the U.S. Congress)*

> ***Article 1, Section 10, Clause 1****: "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."*

Below is the definition of a Bill of Attainder for your reference:

> *Bill of attainder:* ***Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial****. United States v. Brown, 381 U.S. 437, 448-49, 85 S.Ct. 1707, 1715, 14 L.Ed. 484, 492; United States v. Lovett, 328 U.S. 303, 315, 66 S.Ct. 1073, 1079, 90 L.Ed. 1252. An act is a "bill of attainder" when the punishment is death and a "bill of pains and penalties" when the punishment is less sever;* ***both kinds of punishment fall within the scope of the constitutional prohibition. U.S.Const. Art. I, Sect 9, Cl. 3 (as to Congress);' Art. I, Sec, 10 (as to state legislatures).***
> *[Black's Law Dictionary, Sixth Edition, p. 165, Emphasis added]*

The above restrictions form the basis of why the U.S. Congress and the states cannot write statutes and the executive branch cannot write implementing regulations authorizing the IRS to impose financial penalties on natural persons for noncompliance with Subtitle A income taxes absent a judicial trial, nor can they collect any penalties without a trial. The following easily verifiable facts prove our point:

- That *there is no implementing CFR or Federal Register regulation* providing IRS with the authority to assess any kind of financial penalties, including late payment fees, frivolous return fees, etc.
- *The definition of "person" found in Subtitle F also confirms that penalties may not be applied against natural persons*. In fact, all such penalties are ***only*** applicable to Title 27 taxes relating to Alcohol, Tobacco, and Firearms against corporations under Subtitles D and E!

Whenever the government seeks to impose penalties for violations of the Internal Revenue Code, they have the burden of proof to show that the person against whom the penalty is imposed is liable for the penalty:

> *"26 U.S.C. §6703*
>
> *(a) BURDEN OF PROOF.—In any proceeding involving the issue of whether or not any person is liable for a penalty under 6700, 6701, or 6702, the burden of proof with respect to such issue shall be on the Secretary."*

Most IRS agents are made blissfully unaware of the above facts by their supervisors but they are nevertheless true. You will never hear IRS admit to this, because it is their most important and most secret weapon against the vast majority of Americans, who are natural persons. By way of example, below is the section right out of their own regulations found at the government's own website that describes the ONLY persons who can be assessed penalties related to I.R.C. Subtitle A income taxes:

> *[Code of Federal Regulations]*
> *[Title 26, Volume 17, Parts 300 to 499]*
> *[Revised as of April **1**, 2000]*
> *From the U.S. Government Printing Office via GPO Access*
> *[Page 402]*
> *TITLE 26--INTERNAL REVENUE*
> *Additions to the Tax and Additional Amounts--Table of Contents*
> *Sec. 301.6671-1 Rules for application of assessable penalties.*
>
> …
>
> *(b) Person defined. For purposes of subchapter B of chapter 68,* ***the term ``person'' includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.***
> *[SOURCE: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=66973578b4e9e1f6bfdc9815f73792fc&rgn=div8&view=text&node=26:18.0.1.1.2.9.62.12&idno=26]*

Even more interesting, is that the above not only doesn't apply to most Americans: It also doesn't apply to most corporations or partnerships either! Why?…because the corporations or partnerships mentioned above must be registered in the *District of Columbia* (the federal zone). State-(only) chartered corporations or partnerships are in a foreign legislative jurisdiction with respect to federal jurisdiction in the context of Subtitle A of the Internal Revenue Code. Therefore, they are outside the jurisdiction of the IRS and aren't liable for IRS penalties because they aren't within the territorial jurisdiction of the IRS either. Furthermore, the only type of employee who can be penalized is an employee of a U.S. corporation registered in the District of Columbia and who is involved in reporting and complying with taxes for the corporation, and NOT for himself individually!

3 Affect of franchises upon government's authority to administratively penalize

There is one exception to the Constitutional prohibition against "Bills of Attainder" mentioned in the previous section, and that exception occurs in the case where we consensually or contractually participate in government franchises and thereby accept some privilege or benefit from the government that has the affect of consensually waiving the prohibition.

*FRANCHISE. **A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right.** Elliott v. City of Eugene, 135 Or. 108, 294 P. 358, 360. In England it is defined to be a royal privilege in the hands of a subject.*

A "franchise," as used by Blackstone in defining quo warranto, (3 Com. 262 [4th Am. Ed.] 322), had reference to a royal privilege or branch of the king's prerogative subsisting in the hands of the subject, and must arise from the king's grant, or be held by prescription, but today we understand a franchise to be some special privilege conferred by government on an individual, natural or artificial, which is not enjoyed by its citizens in general. State v. Fernandez, 106 Fla. 779, 143 So. 638, 639, 86 A.L.R. 240.

In this country a franchise is a privilege or immunity of a public nature, which cannot be legally exercised without legislative grant. To be a corporation is a franchise.** The various powers conferred on corporations are franchises. The execution of a policy of insurance by an insurance company **[e.g. Social Insurance/Social Security]**, and the issuing a bank note by an incorporated bank **[such as a Federal Reserve NOTE]**, are franchises. People v. Utica Ins. Co.. 15 Johns., N.Y., 387, 8 Am.Dec. 243. But it does not embrace the property acquired by the exercise of the franchise. Bridgeport v. New York & N. H. R. Co., 36 Conn. 255, 4 Arn.Rep. 63. Nor involve interest in land acquired by grantee. Whitbeck v. Funk, 140 Or. 70, 12 P.2d 1019, 1020. **In a popular sense, the political rights of subjects and citizens are franchises, such as the right of suffrage. etc. Pierce v. Emery, 32 N.H. 484; State v. Black Diamond Co., 97 Ohio St. 24, 119 N.E. 195, 199, L.R.A.l918E, 352.

Elective Franchise. The right of suffrage: the right or privilege of voting in public elections.

Exclusive Franchise. See Exclusive Privilege or Franchise.

General and Special. The charter of a corporation is its "general" franchise, while a "special" franchise consists in any rights granted by the public to use property for a public use but-with private profit. Lord v. Equitable Life Assur. Soc., 194 N.Y. 212, 81 N.E. 443, 22 L.R.A.,N.S., 420.

Personal Franchise. A franchise of corporate existence, or one which authorizes the formation and existence of a corporation, is sometimes called a "personal" franchise. as distinguished from a "property" franchise, which authorizes a corporation so formed to apply its property to some particular enterprise or exercise some special privilege in its employment, as, for example, to construct and operate a railroad. See Sandham v. Nye, 9 Misc.ReP. 541, 30 N.Y.S. 552.

Secondary Franchises. The franchise of corporate existence being sometimes called the "primary" franchise of a corporation, its "secondary" franchises are the special and peculiar rights, privileges, or grants which it may, receive under its charter or from a municipal corporation, such as the right to use the public streets, exact tolls, collect fares, etc. State v. Topeka Water Co., 61 Kan. 547, 60 P. 337; Virginia Canon Toll Road Co. v. People, 22 Colo. 429, 45 P. 398 37 L.R.A. 711. The franchises of a corporation are divisible into (1) corporate or general franchises; and (2) "special or secondary franchises. The former is the franchise to exist as a corporation, while the latter are certain rights and privileges conferred upon existing corporations. Gulf Refining Co. v. Cleveland Trust Co., 166 Miss. 759, 108 So. 158, 160.

Special Franchisee. See Secondary Franchises, supra.
[Black's Law Dictionary, Fourth Edition, pp. 786-787]

An example of a government franchise is federal employment or "public office", participation in which implies the consent to abide by all statutes passed by the Legislative Branch and regulations passed by the Executive Branch that pertain directly to federal "employees":

"Anyone who partakes of the benefits or privileges of a given statute, or anyone who even places himself into a position where he may avail himself of those benefits at will, cannot reach constitutional grounds to redress grievances in the courts against the given statute."
[Ashwander v. T.V.A., 297 U.S. 288, 346, 56 S. Ct. 466, 482, 80 L.Ed. 688, (1938)][underlines added]

The above ruling does not specifically define all the implications of what it means to "*place himself into a position where he may avail himself of those benefits at will*", but the implication is obvious:

1. BOTH parties to the transaction must receive mutual consideration and benefit, and this benefit must be guaranteed by contract. The most basic element of any contract is the requirement for *mutual* consideration. All franchises constitute contracts.[1] Contracts, to be enforceable against either party, require mutual consideration.[2].

[1] See Larson v. South Dakota, 278 US 429, 73 L ed 441, 49 S Ct 196; Grand Trunk Western R. Co. v. South Bend, 227 US 544, 57 L ed 633, 33 S Ct 303; Blair v. Chicago, 201 US 400, 50 L ed 801, 26 S Ct 427; Arkansas-Missouri Power Co. v. Brown, 176 Ark 774, 4 SW2d 15, 58 ALR 534; Chicago General R. Co. v. Chicago, 176 Ill 253, 52 NE 880; Louisville v. Louisville Home Tel. Co. 149 Ky 234, 148 SW 13; State ex rel. Kansas City v. East Fifth

2. One must LAWFULLY be able to receive said benefits. Those not qualified by law to receive benefits who are able to obtain them anyway because the program is administered in violation of law technically are NOT able to receive said benefits. Most Americans, for instance, may not lawfully participate in Social Security because the Social Security Act does not authorize those domiciled in states of the Union on other than federal territory to participate. Therefore, they are not lawfully able to receive benefits and therefore cannot have the franchise agreement, the Social Security Act, lawfully enforced against them. See:

Why You Aren't Eligible for Social Security, Form #06.001 http://sedm.org/Forms/FormIndex.htm

3. The benefits must be owed as a matter of contract or right. Any program such as Social Security which does not obligate the government contractually to provide said benefits would not constitute "consideration" within the meaning of contract law, and therefore the franchise agreement is unenforceable against the party who received no consideration. The government cannot get something for nothing, whereby they can enforce their statutes against you without providing any real, contractual consideration.

All enforcement statutes that impose penalties upon government employees are designed to ensure that public employees stay within the bounds of their Constitutional authority. These laws amount to "private law", which means that they don't apply to everyone generally, but more specifically to only those persons who contractually consent by accepting employment or "public office" within the government.

> *"Private law. That portion of the law which defines, regulates, enforces, and administers relationships among individuals, associations, and corporations. As used in contradistinction to public law, the term means all that part of the law which is administered between citizen and citizen, or which is concerned with the definition, regulation, and enforcement of rights in cases where both the person in whom the right inheres and the person upon whom the obligation is incident are private individuals. See also Private bill; Special law. Compare Public Law."*
> *[Black's Law Dictionary, Sixth Edition, p. 1196]*

All private law, in fact, originates ONLY through individual consent in some form, and originates from our right to contract. Those who do not consensually or voluntarily accept the benefit of federal employment, for instance:

1. Are not subject to any of the federal employment franchise laws because they never expressly consented to the franchise agreement, which is the employment contract.
2. May not properly call federal statutes that relate to public employment "law" in their case. Private law can only be "law" in the case of those who are subject to it. For everyone else, it is simply a code that is just as irrelevant as the laws of China are to the average American.

It is well within the discretion of Congress to write legislation which imposes administrative, non-judicial penalties against its "employees", and these rules are no different than a private employer would lawfully impose against their private employees. Below, in fact, is what the U.S. Supreme Court has said about the authority of Congress to write laws that might adversely affect the rights of its "employees":

> *"**The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer.** We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v. Johnson, 425 U.S. 238, 247 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. O'Connor v. Ortega, 480 U.S. 709, 723 (1987) (plurality opinion); id., at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. Gardner v. Broderick, [497 U.S. 62, 95] 392 U.S. 273, 277-278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. Connick v. Myers, 461 U.S. 138, 147 (1983). Private citizens cannot be*

Street R. Co. 140 Mo 539, 41 SW 955; Baker v. Montana Petroleum Co. 99 Mont 465, 44 P2d 735; Re Board of Fire Comrs. 27 NJ 192, 142 A2d 85; Chrysler Light & P. Co. v. Belfield, 58 ND 33, 224 NW 871, 63 ALR 1337; Franklin County v. Public Utilities Com. 107 Ohio St 442, 140 NE 87, 30 ALR 429; State ex rel. Daniel v. Broad River Power Co. 157 SC 1, 153 SE 537; Rutland Electric Light Co. v. Marble City Electric Light Co. 65 Vt 377, 26 A 635; Virginia-Western Power Co. v. Commonwealth, 125 Va 469, 99 SE 723, 9 ALR 1148, cert den 251 US 557, 64 L ed 413, 40 S Ct 179, disapproved on other grounds Victoria v. Victoria Ice, Light & Power Co. 134 Va 134, 114 SE 92, 28 ALR 562, and disapproved on other grounds Richmond v. Virginia Ry. & Power Co. 141 Va 69, 126 SE 353.

[2] See Pennsylvania R. Co. v. Bowers, 124 Pa 183, 16 A 836

punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. Public Workers v. Mitchell, 330 U.S. 75, 101 (1947); Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 556 (1973); Broadrick v. Oklahoma, 413 U.S. 601, 616 -617 (1973)."
[Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)]

Based on the above, there is no question that the Constitutional prohibition against "Bills of Attainder" and other non-judicial or administrative penalties can only be waived in the case of statutes and regulations passed by government to regulate the behavior of public employees, but only while on official duty and in the exercise of authority that is lawfully delegated to them. Such rules CANNOT prescribe penalties, in most cases, for behavior that occurs while federal "employees" are off duty.

Another example of a lawful waiver of the prohibition against Bills of Attainder is the case of privileged corporations. A corporation is a creation of the government and a "public franchise". Those who form such corporations, for the most part, enjoy a privileged "limited liability" from the consequences of their official acts by virtue of being an employee of the corporation. However, that limitation on liability does NOT extend to the officers of the corporation in the context of statutes and regulations passed by the government which regulate the corporation. Nearly all of the penalty statutes under the Internal Revenue Code, codified under Subtitle F, apply almost exclusively to "officers and employees of a corporation". Below is the definition of the term "person" from the Internal Revenue Code which proves this:

TITLE 26 > Subtitle F > CHAPTER 68 > Subchapter B > PART I > § 6671
§ 6671. Rules for application of assessable penalties

(b) Person defined

***The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership**, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

The "corporation" they are talking about above can only lawfully be a federal corporation. More specifically, it can also be the "United States Government", which Title 28 of the United States Code defines as a "federal corporation". To wit:

United States Code
TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART VI - PARTICULAR PROCEEDINGS
CHAPTER 176 - FEDERAL DEBT COLLECTION PROCEDURE
SUBCHAPTER A - DEFINITIONS AND GENERAL PROVISIONS
Sec. 3002. Definitions

*(15) **"United States" means** -*
*(A) **a Federal corporation**;*
(B) an agency, department, commission, board, or other entity of the United States; or
(C) an instrumentality of the United States.

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*"Corporations are also of all grades, and made for varied objects; **all governments are corporations, created by usage and common consent, or grants and charters which create a body politic for prescribed purposes; but whether they are private, local or general, in their objects, for the enjoyment of property, or the exercise of power, they are all governed by the same rules of law, as to the construction and the obligation of the instrument by which the incorporation is made**. One universal rule of law protects persons and property. It is a fundamental principle of the common law of England, that the term freemen of the kingdom, includes 'all persons,' ecclesiastical and temporal, incorporate, politique or natural; it is a part of their magna charta (2 Inst. 4), and is incorporated into our institutions. The persons of the members of corporations are on the same footing of protection as other persons, and their corporate property secured by the same laws which protect that of individuals. 2 Inst. 46-7. 'No man shall be taken,' 'no man shall be disseised,' without due process of law, is a principle taken from magna charta, infused into all our state constitutions, and is made inviolable by the federal government, by the amendments to the constitution."*
[Proprieters of Charles River Bridge v. Proprieters of, 36 U.S. 420 (1837)]

The "officer or employee of a corporation" they are talking about is a "public employee", who works for the "federal corporation" called the "United States Government". That corporation is a "foreign corporation" with respect to a state of the Union, meaning that it is only subject to federal law and not state law:

> *"A foreign corporation is one that derives its existence solely from the laws of another state, government, or country, and the term is used indiscriminately, sometimes in statutes, to designate either a corporation created by or under the laws of another state or a corporation created by or under the laws of a foreign country."*
>
> *"A federal corporation operating within a state is considered a domestic corporation rather than a foreign corporation. The United States government is a foreign corporation with respect to a state."*
> *[19 Corpus Juris Secundum, Corporations, §883]*

On the other hand, Congress has no authority to write legislation which would impose administrative, non-judicial penalties against members of the general public acting only their capacity as private citizens and not "public employees" or other privileged entities. This is confirmed again by the U.S. Supreme Court, which said that Congress cannot enact legislation which adversely affects the private conduct and private rights of the general populace:

> *"The power to "legislate generally upon" life, liberty, and property, as opposed to the "power to provide modes of redress" against offensive state action, was "repugnant" to the Constitution. Id., at 15. See also United States v. Reese, 92 U.S. 214, 218 (1876); United States v. Harris, 106 U.S. 629, 639 (1883); James v. Bowman, 190 U.S. 127, 139 (1903). Although the specific holdings of these early cases might have been superseded or modified, see, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); United States v. Guest, 383 U.S. 745 (1966), their treatment of Congress' §5 power as corrective or preventive, not definitional, has not been questioned."*
> *[City of Boerne v. Florez, Archbishop of San Antonio, 521 U.S. 507 (1997)]*

To conclude and summarize the findings of this section:

1. Congress cannot lawfully impose administrative, non-judicial penalties (called unconstitutional "Bills of Attainder") against private citizens or which adversely affect the rights of private citizens unless the subject of the penalty has availed him or her self of a government privilege or benefit, such as federal employment or participation in a federal corporation as an officer of the corporation.
2. The receipt of all government "privileges" must be completely voluntary and cannot be compelled in any way. Because the receipt of such "privileges" often involves the surrender of Constitutional rights to property, life, or liberty of some kind, then they require consent provided in some form, and usually in writing. The state CANNOT lawfully compel the surrender of constitutional rights:

> *"It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of Constitutional rights. If the state may comp[el the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out or existence."*
> *[Frost v. Railroad Commission, 271 U.S. 583, 46 S.Ct. 605 (1926)]*

3. If the government attempts to impose an administrative, non-judicial penalty, then it is assuming that you are involved in a privileged, usually excise taxable activity of some kind. An example would be a "trade or business", which is defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office".
4. When the government tries to institute administrative penalties, then the person who is the target of the penalty should be asking the government the following questions:
   4.1. Please provide court-admissible evidence under penalty of perjury which proves the existence of my consent to receive a government benefit or privilege.
   4.2. What voluntary, privileged, excise taxable activity do you believe that I am involved in?
5. Those who want to defend and protect their Constitutional Rights from encroachment by the government should NOT ever accept any kind of privilege, benefit, or entitlement from the government. All such "privileges" cause an inevitable surrender of personal sovereignty and a surrender of sovereign immunity under the Foreign Sovereign Immunities Act found in 28 U.S.C. §1605(a)(2).

If you would like to learn more about all the affects resulting from participation in government franchises, see:

Government Instituted Slavery Using Franchises, Form #05.030 http://sedm.org/Forms/FormIndex.htm

4 Requirement for Implementing Regulations

Now let's talk about the requirement for implementing regulations. Pursuant to 44 U.S.C.A. §§1504-1507, before a national domiciled in the union states of the United States of America can be bound by, or adversely effected by legislation or an "Act of Congress" having ***general applicability*** to such individuals, it must be published in the *Federal Register*.

> *5 U.S.C. §552(a): Public information; agency rules, opinions, orders, records, and proceedings*
>
> *Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.*
>
> _____
>
> *26 CFR §601.702 Publication and public inspection*
>
> *(a)(2)(ii) Effect of failure to publish.*
>
> *Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the Federal Register,* ***such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision*** *(i) of this subparagraph.* ***Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.***

There are three and only three exceptions to the requirement of publication in the Federal Register of all implementing regulations, which are:

1. A military or foreign affairs function of the United States. 5 U.S.C. §553(a)(1) .
2. A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 5 U.S.C. §553(a)(2) .
3. Federal agencies or persons in their capacity as officers, agents, or employees thereof. 44 U.S.C. §1505(a)(1).

Note that all of the above three exempted groups are within the government itself. Therefore, if the government directly cites and enforces a statute against you for which there is no enforcement regulation published within the Federal Register, then they are "presuming", usually wrongfully, that you are a member of one of the three groups within the federal government who are specifically exempted from the requirement. All such presumptions against those who are protected by the Constitution are an unconstitutional violation of due process of law which essentially compel you to accept the legal disabilities associated with a federal franchise which in most cases, you derive no benefit from. This frequent and unconstitutional abuse of presumption to prejudice and destroy your rights is thoroughly documented below:

Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction, Form #05.017 http://sedm.org/Forms/FormIndex.htm

Enforcement regulations published as required within the Federal Register are then categorized pursuant to their applicable Title in the Code of Federal Regulations (CFR). 26 U.S.C. §7805(a) states:

> *"…the Secretary shall prescribe all needful rules and regulations for the* ***enforcement*** *of this title."*

The Internal Revenue Code is not self-executing. Without an implementing regulation, applicable to a particular type of tax, a statute has no force of law against anyone who is not part of the government as a "public officer" or "employee", and therefore imposes no duties or penalties. This is confirmed by the definition of "person" found in 26 U.S.C. §6671(b) and by the levy statute which identifies the proper audience for "levy" actions, which are enforcement actions:

> *Subtitle F > CHAPTER 64 > Subchapter D > PART II > § 6331*
> *§ 6331. Levy and distraint*
>
> *(a) Authority of Secretary*

> *If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax.* ***Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia,*** *by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.*

Furthermore, the Parallel Table Authorities for 26 CFR reveals that the Bureau of Alcohol, Tobacco, and Firearms is the ***only*** authority authorized to use distraint or assess penalties for nonpayment of income taxes under Title 27 ONLY. The following is taken from the Parallel Table of Authorities in the back of the Title 26 Code of Federal Regulations [CFR]. It is a list of the ONLY 26 CFR Part 301 Regulations that derive their Authority for implementation from Title 26 USCS or 26 IRC [Income Taxes]. Note the conspicuous absence of any penalty, interest, levy or seizure for the Title 26 Voluntary Income Tax. Again, it is inconceivable that the Congress would legislate penalties for the individual income tax, since the supreme Court and the IRS have both substantiated that such a Tax is voluntary and NOT based upon distraint. It would be absurd to impose penalties for non-compliance, when such an option is what made the tax voluntary to begin with!

Table 1: Parallel Table of Authorities 26 CFR to 26 USCS

CFR to USCS	
IRS Regulations	***Internal Revenue Code***
26 Part 301	26 §6011
26 Part 301	31 §3720A
26 Part 301	26 §6245
26 Part 301	26 §7805
26 Part 301	26 §6233
26 Part 301	26 §6326
26 Part 301	26 §6404
26 Part 301	26 §§6324A-6324B
26 Part 301	26 §6241
26 Part 301	26 §§6111-6112
26 Part 301	26 §6223
26 Part 301	26 §6227
26 Part 301	26 §6230-6231
26 Part 301	26 §6033
26 Part 301	26 §6036
26 Part 301	26 §6050M
26 Part 301	26 §6059
26 Part 301	26 §2032A
26 Part 301	26 §7624
26 Part 301	26 §3401
26 Part 301	26 §§6103-6104
26 Part 301	26 §1441
26 Part 301	26 §7216
26 Part 301	26 §6621
26 Part 301	26 §367
26 Part 301	26 §6867
26 Part 301	26 §6689

You can look at the Parallel Table of Authorities yourself at:

http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html

The following table, repeated from section 3.15.3 of the *Great IRS Hoax*, also provides conclusive evidence that there are NO implementing regulations associated with all of Title 26 that relate to income taxes under Subtitle A of the Internal Revenue Code. This table provides a list of the enforcing regulations for Title 26, mostly under Subtitle F, which is Procedures and Administration:

Table 1: Enforcement Regulations

Title 26 U.S.C.	*Description*	*Location of Enforcement Regulations*
§6020	Returns prepared for or executed by Secretary	27 CFR Parts 53, 70
§6201	Assessment authority	27 CFR Part 70
§6203	Method of assessment	27 CFR Part 70
§6212	Notice of deficiency	No Regulations
§6213	Restrictions applicable to: deficiencies, petition to Tax Court	No Regulations
§6214	Determination by Tax Court	No Regulations
§6215	Assessment of deficiency found by Tax Court	No Regulations
§6301	Collection authority	27 CFR Parts 24, 25, 53,70, 250, 270, 275
§6303	Notice and demand for tax	27 CFR Parts 53, 70
§6321	Lien for taxes	27 CFR Part 70
§6331	Levy and Distraint	27 CFR Part 70
§6332	Surrender of property subject to levy	27 CFR Part 70
§6420	Gasoline used on farms	No Regulations
§6601	Interest on underpayment, nonpayment, or extensions for payment, of tax	27 CFR Parts 70, 170, 194, 296
§6651	Failure to file tax return or to pay tax	27 CFR Parts 24, 25, 70, 194
§6671	Rules for application of assessable penalties	27 CFR Part 70
§6672	Failure to collect and pay over tax, or attempt to evade or defeat tax	27 CFR Part 70
§6701	Penalties for adding and abetting understatement of tax liability	27 CFR Part 70
§6861	Jeopardy assessments of income, estate, and gift taxes	No Regulations
§6902	Provisions of special application to transferees	No Regulations
§7201	Attempt to evade or defeat tax	No Regulations
§7203	Willful failure to file return, supply information, or pay tax	No Regulations
§7206	Fraud and false statements	No Regulations
§7207	Fraudulent returns, statements and other documents	27 CFR Part 70
§7210	Failure to obey summons	No Regulations
§7212	Attempts to interfere with administration of Internal Revenue Laws	27 CFR Parts 170, 270, 275, 290, 295, 296
§7342	Penalty for refusal to permit entry, or examination	27 CFR Parts 24, 25, 170, 270, 275, 290, 295, 296
§7343	Definition of term "person"	No Regulations
§7344	Extended application of penalties relating to officers of the Treasury Department	No Regulations
§7401	Authorization (judicial proceedings)	27 CFR Part 70
§7402	Jurisdiction of district courts	No Regulations
§7403	Action to enforce lien or to suspend property to payment of tax	27 CFR Part 70
§7454	Burden of proof in fraud, foundation manager, and transferee cases	No Regulations
§7601	Canvass of districts for taxable persons and objects	27 CFR Part 70
§7602	Examination of books and witnesses	27 CFR Parts 70, 170, 296
§7603	Service of summons	27 CFR Part 70
§7604	Enforcement of summons	27 CFR Part 70
§7605	Time and place of examination	27 CFR Part 70
§7608	Authority of Internal Revenue enforcement officers	27 CFR Parts 70, 170, 296

Most noteworthy of the above is that ALL of the provisions identified in Subtitle F are associated with Title 27, Alcohol, Tobacco, and Firearms, and NOT Subtitle A Income taxes! Why? Because these types of taxes are indirect excise taxes on privileges. If you don't want the penalty, then don't choose the privileged manufacture of alcohol, tobacco, or firearms.

In addition, the following court ruling clearly expresses the lack of IRS authority to assess penalties absent implementing regulations:

> *"…the Act's **civil and criminal penalties** attach only upon the **violation of a regulation** promulgated by the Secretary; **if the Secretary were to do nothing, the Act itself would impose no penalties on anyone…only those who violate the regulations (not the Code) may incur civil or criminal penalties,** it is the **actual regulation issued by the Secretary of the Treasury and not the broad authorizing language of the statue**, which is to be tested against the standards of the 4th Amendment."*
> *[Calif. Bankers Assoc. v. Shultz, 416 U.S. 25, 44, 39 L.Ed.2d 812, 94 S.Ct. 1494]*

An older version of the Internal Revenue Manual, which is reflective of the ruling case law on this subject, states that the IRS has ***no delegated authority to issue a civil penalty or to collect penalties without a judgment signed by a magistrate***:

> ***IRM 546 §19(b)(2) "the civil penalty for non-compliance may be imposed only by filing a suit in the name of the United States, naming the taxpayer as a defendant and securing a judgment."***

The supreme Court agrees with this conclusion in the following case:

> *"Our system of taxation is based upon **voluntary assessment and payment**, **not upon distraint.**"*
> *[Flora v. U.S., 362 U.S. 145 (1960)]*

In case you don't understand, "distraint" is defined as follows and is the equivalent of "force" or "coercion" or "compulsion" in the collection of debts and legal liabilities:

> *"…the act or process of DISTRAINT whereby a person (the DISTRAINOR), without prior court approval, seizes the **personal property** of another located upon the distrainor's land in satisfaction of a claim, as a pledge for performance of a duty, or in reparation of an injury. Where goods are seized in satisfaction of a claim, the distrainor can hold the goods until the claim is paid and, failing payment, may sell them in satisfaction."*
> *[Barron's Law Dictionary, Steven H. Gifis, 1996, p. 150, ISBN 0-8120-3096-6]*

Therefore, IRS assessments of penalties and demands for money, without the authority of law, their lawless actions to penalize Americans that have not been legally defended or explained or justified based on their delegated authority, constitutes *extortion under the color of law, mail fraud, mailing threatening communications, and conspiracy against the rights of a Citizen, for which they can be held personally liable should legal action become necessary*.

5 Courts administering franchises are acting in an administrative rather than judicial capacity as part of the Executive and not Judicial Branch

Participating in ANY government franchise can leave you entirely without standing or remedy in any federal court! Essentially, by eating out of the government's hand, you are SCREWED, BLACK AND BLUED, and TATTOOED!

> ***"These general rules are well settled: (1) That the United States, when it creates rights in individuals against itself [a "public right", which is a euphemism for a "franchise" to help the court disguise the nature of the transaction], is under no obligation to provide a remedy through the courts.*** *United States ex rel. Dunlap v. Black, 128 U. S. 40, 9 Sup. Ct. 12, 32 L. Ed. 354; Ex parte Atocha, 17 Wall. 439, 21 L. Ed. 696; Gordon v. United States, 7 Wall. 188, 195, 19 L. Ed. 35; De Groot v. United States, 5 Wall. 419, 431, 433, 18 L. Ed. 700; Comegys v. Vasse, 1 Pet. 193, 212, 7 L. Ed. 108. (2) That where a statute creates a right and provides a special remedy, that remedy is exclusive. Wilder Manufacturing Co. v. Corn Products Co., 236 U. S. 165, 174, 175, 35 Sup. Ct. 398, 59 L. Ed. 520, Ann. Cas. 1916A, 118; Arnson v. Murphy, 109 U. S. 238, 3 Sup. Ct. 184, 27 L. Ed. 920; Barnet v. National Bank, 98 U. S. 555, 558, 25 L. Ed. 212; Farmers' & Mechanics' National Bank v. Dearing, 91 U. S. 29, 35, 23 L. Ed. 196. Still the fact that the right and the remedy are thus intertwined might not, if the provision stood alone, require us to hold that the remedy expressly given excludes a right of review by the Court of Claims, where the decision of the special tribunal involved no disputed question of fact and the denial of compensation was rested wholly upon the construction of the act. See Medbury v. United States, 173 U. S. 492, 198, 19 Sup. Ct. 503, 43 L. Ed. 779; Parish v. MacVeagh, 214 U. S. 124, 29 Sup. Ct. 556, 53 L. Ed. 936; McLean v. United States, 226 U. S. 374, 33 Sup. Ct. 122, 57 L. Ed. 260; United States v.*

Laughlin (No. 200), 249 U. S. 440, 39 Sup. Ct. 340, 63 L. Ed. 696, decided April 14, 1919. But here Congress has provided:
[U.S. v. Babcock, 250 U.S. 328, 39 S.Ct. 464 (1919)]

Signing up for government entitlements hands them essentially a blank check, because they, and not you, determine the cost for the service and how much you will pay for it beyond that point. This makes the public servant into your Master and beyond that point, you must lick the hands that feed you. Watch Out! NEVER, EVER take a hand-out from the government of ANY kind, or you'll end up being their CHEAP WHORE. The Bible calls this WHORE "Babylon the Great Harlot". Remember: Black's Law Dictionary defines "commerce", e.g. commerce with the GOVERNMENT, as "intercourse". Bend over!

> ***Commerce***. …***Intercourse*** *by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities [**governments**] and agencies by which it is promoted and the means and appliances by which it is carried on…"*
> *[Black's Law Dictionary, Sixth Edition, p. 269]*

Government franchises and licenses are the main method for destroying the sovereignty of the people pursuant to 28 U.S.C. §1603(b)(3) and 28 U.S.C. §1605(a)(2) . For further details, read the Sovereignty Forms and Instructions Manual, Form #10.005, Sections 1.4 though 1.11.

The U.S. Supreme Court has said that when Congress creates what it calls a "public right" and, by implication a "statutory privilege" or "franchise", Congress has the authority to circumscribe and prescribe how that right may be exercised and which forums it is enforced within. Hence, for instance, Congress can prescribe that if you dispute your income tax liability, you must first enter Tax Court, which isn't a Constitutional court at all, but an Article I administrative agency within the Executive rather than Judicial Branch of the government.

> *Although* Crowell *and* Raddatz *do not explicitly distinguish between rights created by Congress and other rights, such a distinction underlies in part* Crowell's *and* Raddatz' *recognition of a critical difference between rights created by federal statute and rights recognized by the Constitution. Moreover, such a distinction seems to us to be necessary in light of the delicate accommodations required by the principle of separation of powers reflected in Art. III. The constitutional system of checks and balances is designed to guard against "encroachment or aggrandizement" by Congress at the expense of the other branches of government.* Buckley v. Valeo, *424 U.S., at 122, 96 S.Ct., at 683. But when Congress creates a statutory right [a "privilege" in this case, such as a "trade or business"], it clearly has the discretion, in defining that right, to create presumptions, or assign burdens of proof, or prescribe remedies; it may also provide that persons seeking to vindicate that right must do so before particularized tribunals created to perform the specialized adjudicative tasks related to that right.FN35 Such provisions do, in a sense, affect the exercise of judicial power, but they are also incidental to Congress' power to define the right that it has created. No comparable justification exists, however, when the right being adjudicated is not of congressional creation. In such a situation, substantial inroads into functions that have traditionally been performed by the Judiciary cannot be characterized merely as incidental extensions of Congress' power to define rights that it has created. Rather, such inroads suggest unwarranted encroachments upon the judicial power of the United States, which our Constitution reserves for Art. III courts.*
> *[Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. at 83-84, 102 S.Ct. 2858 (1983)]*

The U.S. Supreme Court also said that the only circumstances when Congress may remove the enforcement of a right to a non-Article III, legislative tribunal or, by implication, remove it from a state court to federal court is in connection with a statutory franchise or "public right":

> *"The distinction between public rights and private rights has not been definitively explained in our precedents.FN22 Nor is it necessary to do so in the present cases, for it suffices to observe that a matter of public rights must at a minimum arise "between the government and others." Ex parte Bakelite Corp., supra, at 451, 49 S.Ct., at 413.FN23 In contrast, "the liability of one individual to another under the law as defined," Crowell v. Benson, supra, at 51, 52 S.Ct., at 292, is a matter of private rights. Our precedents clearly establish that only controversies in the former category may be removed from Art. III courts and delegated to legislative courts or administrative agencies for their determination. See Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n, 430 U.S. 442, 450, n. 7, 97 S.Ct. 1261, 1266, n. 7, 51 L.Ed.2d 464 (1977); Crowell v. Benson, supra, 285 U.S., at 50-51, 52 S.Ct., at 292. See also Katz, Federal Legislative Courts, 43 Harv.L.Rev. 894, 917-918 (1930).FN24 Private-rights disputes, on the other hand, lie at the core of the historically recognized judicial power."*
> *[Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858 (1983)]*

The key to determining whether a matter must be heard in federal court or state court then, is to first determine whether it involves a "public right" or "statutory franchise". If it is a state statutory privilege or right, it must be litigated in a state

court. If it is a federal statutory right or privilege, then it can be litigated only in a federal court. The Separation of Powers Doctrine and the sovereign immunity of the states and federal governments towards each other prohibit state matters from being heard in a federal court or federal matters being heard in a state court. Alden v. Maine, 527 U.S. 706 (1999) .

Lets apply these concepts to the Internal Revenue Code, Subtitle A "trade or business" franchise. The operation of this franchise is exhaustively explained below:

The "Trade or Business" Scam, Form #05.001 http://sedm.org/Forms/FormIndex.htm

The franchise agreement is codified in the Internal Revenue Code, Subtitle A: Income Taxes. The administration of this franchise is done through the IRS. When disputes arise under the franchise agreement, they are referred to the U.S. Tax Court, which is an Article I legislative court within the Executive and NOT Judicial Branch of the government. 26 U.S.C. §7441.

> *TITLE 26 > Subtitle F > CHAPTER 76 > Subchapter C > PART I > § 7441*
> *§ 7441. Status*
>
> *There is hereby established, under **article I of the Constitution of the United States**, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court.*

The above should be a HUGE clue that a franchise is being litigated, and that only franchisees called "taxpayers" may appear in such a court. Confirmation of this fact is found in Tax Court Rule 13, which says on this subject:

> *United States Tax Court*
> *RULE 13. JURISDICTION*
>
> *(a) Notice of Deficiency or of Transferee or Fiduciary Liability Required:*
>
> *Except in actions for declaratory judgment, for disclosure, for readjustment or adjustment of partnership items, for administrative costs, or for review of failure to abate interest (see Titles XXI, XXII, XXIV,XXVI, and XXVII), the jurisdiction of the Court depends (1) **in a case commenced in the Court by a taxpayer**, upon the issuance by the Commissioner of a notice of deficiency in in-come, gift, or estate tax or, in the taxes under Code chapter41, 42, 43, or 44 (relating to the excise taxes on certain organizations and persons dealing with them), or in the tax under Code chapter 45 (relating to the windfall profit tax),or in any other taxes which are the subject of the issuance of a notice of deficiency by the Commissioner; and (2) in a case commenced in the Court by a transferee or fiduciary, upon the issuance by the Commissioner of a notice of liability to the transferee or fiduciary. See Code secs. 6212, 6213, and 6901.*

It is otherwise ILLEGAL for a person who did not consent to the franchise agreement and who derives no benefits therefrom to appear in the franchise court called "Tax Court" based on the following:

1. It is UNLAWFUL for the United States government to offer federal franchises such as a "trade or business" to persons who are domiciled outside of its exclusive territorial jurisdiction called the "United States", which is defined in 26 U.S.C. §7701(a)(9) and (a)(10) as the District of Columbia and nowhere expanded to include any part of any state of the Union. The Declaration of Independence says that men are created with certain "unalienable rights". An "unalienable right" is one that cannot be bargained away or transferred through any kind of commercial process, such as through a franchise agreement. That means that "nontaxpayers" are legally incapable and incompetent to enter into a franchise agreement with the United States government that would surrender any of their rights and that any attempt to offer such public rights or enforce franchises outside of federal territory within the exclusive jurisdiction of a state constitutes a criminal conspiracy against my rights.

> *"We hold these truths to be self-evident, that **all men are created equal, that they are endowed by their Creator with certain unalienable Rights**, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, -"*
> *[Declaration of Independence]*

2. Tax Court Rule 13(a)(1) requires that only "taxpayers" may petition the court for relief from a Notice of Deficiency, and therefore "nontaxpayers" are not eligible for any relief from said court and would be misrepresenting their status to pay the filing fee.

> *United States Tax Court*
> *RULE 13. JURISDICTION*
>
> *(a) Notice of Deficiency or of Transferee or Fiduciary Liability Required: Except in actions for declaratory judgment, for disclosure, for readjustment or adjustment of partnership items, for administrative costs, or for review of failure to abate interest (see Titles XXI, XXII, XXIV,XXVI, and XXVII), the jurisdiction of the Court depends (1) **in a case commenced in the Court by a taxpayer**, upon the issuance by the Commissioner of a notice of deficiency in in-come, gift, or estate tax or, in the taxes under Code chapter41, 42, 43, or 44 (relating to the excise taxes on certain organizations and persons dealing with them), or in the tax under Code chapter 45 (relating to the windfall profit tax),or in any other taxes which are the subject of the issuance of a notice of deficiency by the Commissioner; and (2) in a case commenced in the Court by a transferee or fiduciary, upon the issuance by the Commissioner of a notice of liability to the transferee or fiduciary. See Code secs. 6212, 6213, and 6901.*

3. The Declaratory Judgments Act, 28 U.S.C. §2201(a), ***forbids*** all courts including this court from making declaratory judgments relating to federal taxes, which means this court lacks jurisdiction to declare anyone a "taxpayer" that is within its jurisdiction and entitled to relief if they provide admissible evidence under penalty of perjury to the contrary.

> *Specifically, Rowen seeks a declaratory judgment against the United States of America with respect to "whether or not the plaintiff is a taxpayer pursuant to, and/or under 26 U.S.C. § 7701(a)(14)." (See Compl. at 2.) **This Court lacks jurisdiction to issue a declaratory judgment "with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986," a code section that is not at issue in the instant action. See 28 U.S.C. § 2201; see also Hughes v. United States, 953 F.2d 531, 536-537 (9th Cir. 1991)** (affirming dismissal of claim for declaratory relief under § 2201 where claim concerned question of tax liability). Accordingly, defendant's motion to dismiss is hereby GRANTED, and the instant action is hereby DISMISSED.*
> *[Rowen v. U.S., 05-3766MMC. (N.D.Cal. 11/02/2005)]*

4. The federal courts have ruled the Internal Revenue Code may not lawfully be enforced against "nontaxpayers", and the ONLY purpose of the U.S. Tax Court is to enforce it.

> *"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..."*
> *[Long v. Rasmussen, 281 F. 236 (1922)]*

> *"A reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as a person liable for the tax without an opportunity for judicial review of this status before the appellation of 'taxpayer' is bestowed upon them and their property is seized..."*
> *[Botta v. Scanlon, 288 F.2d. 504, 508 (1961)]*

> *"Revenue Laws relate to taxpayers and not to non-taxpayers. The latter are without their scope. No procedures are prescribed for non-taxpayers and no attempt is made to annul any of their Rights or Remedies in due course of law. With them [non-taxpayers] Congress does not assume to deal and they are neither of the subject nor of the object of federal revenue laws."*
> *[Economy Plumbing & Heating v. U.S., 470 F2d. 585 (1972)]*

> *"And by statutory definition, 'taxpayer' includes any person, trust or estate subject to a tax imposed by the revenue act. ...Since the statutory definition of 'taxpayer' is exclusive, the federal courts do not have the power to create nonstatutory taxpayers for the purpose of applying the provisions of the Revenue Acts..."*
> *[C.I.R. v. Trustees of L. Inv. Ass'n, 100 F.2d 18 (1939)]*

5. The Internal Revenue Code provides only one remedy for "nontaxpayers" in 26 U.S.C. §7426, and Notice of Deficiency relief is not included in that remedy.
6. The U.S. Supreme Court has said NO COURT, much less this court, has any jurisdiction to declare an innocent person called a "nontaxpayer" as a guilty person called a "taxpayer".

> *"In Calder v. Bull, which was here in 1798, **Mr. Justice Chase said, that there were acts which the Federal and State legislatures could not do without exceeding their authority, and among them he mentioned** a law which punished a citizen for an innocent act; a law that destroyed or impaired the lawful private [labor] contracts [and labor compensation, e.g. earnings from employment through compelled W-4 withholding] of citizens; a law that made a man judge in his own case; and **a law that took the property from A [the worker]. and gave it to B [the government or another citizen, such as through social welfare programs]. 'It is against all reason and justice,' he added, 'for a people to intrust a legislature with such powers, and therefore it cannot be presumed that they have done it. They may command what is right and prohibit what is wrong; but they cannot change innocence into guilt, or punish innocence as a crime, or violate the right of an antecedent lawful private [employment] contract [by compelling W-4 withholding, for instance], or the right of private property. To maintain that a Federal or State legislature possesses such powers [of THEFT!] if they had not been expressly restrained, would, in my opinion, be a political heresy altogether inadmissible in all free republican governments.' 3 Dall. 388.**"*
> *[Sinking Fund Cases, 99 U.S. 700 (1878)]*

U.S. Tax Court cannot therefore entertain any presumptions about the status of "nontaxpayers" which might prejudice their constitutionally protected rights as persons domiciled on land protected by the Constitution without violating your oath. They MUST be presumed innocent until proven guilty, which means they are an innocent "nontaxpayer" and therefore cannot lawfully petition this court for anything but a dismissal for lack of jurisdiction.

> *"Keeping in mind the well-settled rule that **the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt [or PRESUMPTION about status] is to be resolved in favor of those upon whom the tax is sought to be laid**."*
> *[Spreckels Sugar Refining Co. v. McClain, 192 U.S. 397 (1904)]*

7. The U.S. Tax Court is an Article I court within the Executive and not Judicial branch of the United States government. See 26 U.S.C. §7441 and Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. at 83-84, 102 S.Ct. 2858 (1983). Because it is within the Executive and not Judicial Branch of the Government, any penalties or "taxes" it institutes (both of which are equivalent) would constitute an unlawful "bill of attainder" if ordered against a person protected by the United States Constitution domiciled outside of federal territory. Nontaxpayers are NOT "franchisees" (such as a "taxpayers" or "public officers") of the federal government and they derive no "benefits" from the "trade or business"/"public office" franchise defined in 26 U.S.C. §7701(a)(26). In fact, they are not lawfully allowed to participate in any federal franchises because they never consented to participate, have no delegated authority to do so, and do not maintain a domicile on federal territory, which is the only audience that federal franchises can even lawfully be offered to, since our Constitutionally protected rights are "unalienable", meaning that they cannot be bargained away any place they exist, such as within a state of the Union.

> ***Bill of attainder**. Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial. United States v. Brown, 381 U.S. 437, 448-49, 85 S.Ct. 1707, 1715, 14 L.Ed. 484, 492; United States v. Lovett, 328 U.S. 303, 315, 66 S.Ct. 1073, 1079, 90 L.Ed. 1252. An act is a "bill of attainder" when the punishment is death and a "bill of pains and penalties" when the punishment is less severe; both kinds of punishment fall within the scope of the constitutional prohibition. U.S.Const. Art. I, Sect 9, Cl. 3 (as to Congress);' Art. I, Sec, 10 (as to state legislatures).*
> *[Black's Law Dictionary, Sixth Edition, p. 165]*

8. The only occasion where administrative, non-judicial penalties (such as 26 U.S.C. §6651) may lawfully be instituted is against those consensually engaged in federal franchises who therefore implicitly consent to the terms of the franchise agreement and the penalties that are part of it. This sole exception was described by the U.S. Supreme Court as follows:

> *"Anyone who partakes of the benefits or privileges of a given statute, or anyone who even places himself into a position where he may avail himself of those benefits at will, cannot reach constitutional grounds to redress grievances in the courts against the given statute."*
> *[Ashwander v. T.V.A., 297 U.S. 288, 346, 56 S. Ct. 466, 482, 80 L.Ed. 688, (1938)][underlines added]*

> *"**The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees**. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v. Johnson, 425 U.S. 238, 247 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. O'Connor v. Ortega, 480 U.S. 709, 723 (1987) (plurality opinion); id., at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be*

> *dismissed when the incriminating information that they refuse to provide relates to the performance of their job. Gardner v. Broderick, [497 U.S. 62, 95] 392 U.S. 273, 277 -278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. Connick v. Myers, 461 U.S. 138, 147 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. Public Workers v. Mitchell, 330 U.S. 75, 101 (1947); Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 556 (1973); Broadrick v. Oklahoma, 413 U.S. 601, 616 -617 (1973)."*
> *[Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)]*

In point of fact, every government franchise must make the franchisee into a "public officer", "employee", or agent of the government of one kind or another because the ability to regulate private conduct is repugnant to the Constitution:

> *"**The power to "legislate generally upon" life, liberty, and property, as opposed to the "power to provide modes of redress" against offensive state action, was "repugnant" to the Constitution.** Id., at 15. See also United States v. Reese, 92 U.S. 214, 218 (1876); United States v. Harris, 106 U.S. 629, 639 (1883); James v. Bowman, 190 U.S. 127, 139 (1903). Although the specific holdings of these early cases might have been superseded or modified, see, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); United States v. Guest, 383 U.S. 745 (1966), their treatment of Congress' §5 power as corrective or preventive, not definitional, has not been questioned."*
> *[City of Boerne v. Florez, Archbishop of San Antonio, 521 U.S. 507 (1997)]*

9. The U.S. Tax Court itself is a "franchise court" which administers the "trade or business"/"public office" franchise as defined in 26 U.S.C. §7701(a)(26). It constitutes a penalty, a "bill of attainder", and an injury to the constitutionally protected rights of a "nontaxpayer" to be compelled to satisfy the obligations of a franchise which they *do not* consent to and derive not benefit from and never lawfully participated in. It is, in fact, involuntary servitude to be subjected to the jurisdiction of an executive branch administrative franchise court in violation of the Thirteenth Amendment, 42 U.S.C. §1994, and 18 U.S.C. §1583.
10. If a "nontaxpayer" does enter the U.S. Tax Court, the presumption that they are a "taxpayer" would prejudice their constitutional rights. The court can only cite cases and authorities relating to "taxpayers" in its rulings because it can only entertain suits by franchisees called "taxpayers", and all such cases would be inapposite, irrelevant, and prejudicial to the rights of a "nontaxpayer":

> ***Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments.** In Heiner v. Donnan, 285 U.S. 312, 52 S.Ct. 358, 76 L.Ed. 772 (1932), the Court was faced with a constitutional challenge to a federal statute that created a conclusive presumption that gifts made within two years prior to the donor's death were made in contemplation of death, thus requiring payment by his estate of a higher tax. In holding that this irrefutable assumption was so arbitrary and unreasonable as to deprive the taxpayer of his property without due process of law, **the Court stated that it had 'held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment.'** Id., at 329, 52 S.Ct., at 362. See, e.g., Schlesinger v. Wisconsin, 270 U.S. 230, 46 S.Ct. 260, 70 L.Ed. 557 (1926); Hoeper v. Tax Comm'n, 284 U.S. 206, 52 S.Ct. 120, 76 L.Ed. 248 (1931). See also Tot v. United States, 319 U.S. 463, 468-469, 63 S.Ct. 1241, 1245-1246, 87 L.Ed. 1519 (1943); Leary v. United States, 395 U.S. 6, 29-53, 89 S.Ct. 1532, 1544-1557, 23 L.Ed.2d 57 (1969). Cf. Turner v. United States, 396 U.S. 398, 418-419, 90 S.Ct. 642, 653-654, 24 L.Ed.2d 610 (1970).*
> *[United States Supreme Court, Vlandis v. Kline, 412 U.S. 441 (1973)]*

Another implication of the above is that even when the party decides to entertain the lawsuit in United States District Court rather than U.S. Tax Court, that United States District Court:

1. Is administering the terms of a federal franchise called a "trade or business", which is defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office", which public office is ONLY within the United States government.
2. Like the Tax Court that would otherwise have heard the case, is STILL operating in the same *administrative* rather than *judicial* capacity as part of the Executive rather than Judicial Branch of the government under the United States constitution.
3. May only exercise authority over territory of the United States that is not part of any state of the Union. It is to be noted that Tax Court judges are not appointed for life, but for a limited term of 15 years pursuant to 26 U.S.C. §7443(e).

> *"As the only judicial power vested in Congress [under the Constitution] is to create courts whose judges shall hold their offices during good behavior, it necessarily follows that, **if Congress authorizes the creation of courts and the appointment of judges for limited time, it must act independently of the Constitution upon territory which is not part of the United States within the meaning of the Constitution.**"*
> *[O'Donohue v. United States, 289 U.S. 516, 53 S.Ct. 740 (1933)]*

4. Does NOT derive its authority from Article III of the United States Constitution. There is no statute in the context of Title 28 of the U.S. Code that defines the term "State" to include any part of a state of the Union. 28 U.S.C. §1332(d) defines the term "State" to mean federal territory that is no part of any state of the Union. Consequently, it is impossible to implement the diversity of citizenship described in Article III of the Constitution, where the term "State" means ONLY states of the Union and excludes federal statutory "States", which are territories and possessions of the United States described in 4 U.S.C. §110(d).
5. Derives all of its authority within the context of that dispute from Article 4, Section 3, Clause 2 of the United States Constitution, because it is administering a franchise called a "trade or business". All rights are property and anything that conveys rights are therefore also "property" within the meaning of this provision of the constitution.

If you would like to know more about all the implications of participating in government franchise upon your standing in federal court, please read:

Government Instituted Slavery Using Franchises, Form #05.030 http://sedm.org/Forms/FormIndex.htm

6 Rebutted Arguments against this document

6.1 The "includes" argument

Now when the IRS hears the arguments in this memorandum, they often try to say that the above definition of "person" uses the word "includes", which is an expansive rather than limiting term. Here is what they will quote, from 26 U.S.C. §7701(c) in making this statement:

> *"Sec. 7701(c) INCLUDES AND INCLUDING. –*
>
> *The terms 'include' and 'including' when used in a definition contained in this title* ***shall not be deemed to exclude other things otherwise within the meaning of the term defined.****"*

The IRS will say that the phrase in 26 CFR § 301.6671-1 "includes an officer or employee of a corporation" does *not exclude* other uses of the term, like *EVERYONE else or ALL Americans*, because of the definition of the word "includes" found in section 3.12.1.8 of the *Great IRS Hoax*. But we know from statements made in Congressional Research Service Report 97-59A appearing in section 8.2 of *Great IRS Hoax* that Subtitles A and C income taxes are excise taxes, and that the "persons" indicated in the above regulations are the only ones in receipt of privileges from the U.S. government. Expanding the operation of penalties beyond these legal fictions called "persons" makes the income tax operate effectively as a direct tax rather than an indirect tax, which is clearly unconstitutional if enforced outside of federal jurisdiction or within states of the Union.

The answer to this issue on the abuse of the word "includes" and "including" by the IRS appears in the free pamphlet entitled "The Meaning of the words 'includes' and 'including'" available for free on the web at:

Meaning of the Words "includes" and "including", Form #05.014 http://sedm.org/Forms/FormIndex.htm

This is a very common and unscrupulous tactic designed to confuse and intimidate Americans and illegally expand the jurisdiction of the taxing power of the federal government for Subtitle A income taxes beyond its clear limits found in the definition of "United States" in 26 U.S.C. §7701(a)(9) and "State" found in 26 U.S.C. §7701(a)(10) and 4 U.S.C. §110(d).

6.2 The "no regulations required" argument

Another popular technique used by the IRS and the Department of Justice is to try to establish that implementing regulations are NOT required in order to lawfully impose penalties against persons domiciled in states of the Union who are not engaged in federal franchises or acting as federal "employees", federal contractors, or federal agents. This argument is simply wrong. Below is an example of the use of this argument by a U.S. Attorney that happened in a real life case in Federal District Court in response to a motion to dismiss by the Plaintiff, a private party:

> *The Plaintiff's seemingly new argument is that the sections of the Internal Revenue Code ("IRC") on which the government relies in this case-§§ 6700,6701,7402 and 7408-are not supported by implementing regulations and are thus ineffective. Plaintiffs argument (which has been made by others in the tax protest community) is without merit. The Treasury Secretary has broad authority to "prescribe all needful rules and regulations for the enforcement of [the IRC], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue" under 26 U.S.C. §7805(a) (emphasis added); see Granse v. United States, 892 F.Supp. 219, 224 (D.Minn. 1995). This statute "does not require the promulgation of regulations as a prerequisite to the enforcement of each and every provision of the [IRC]." Id.; see Watts v. Internal Revenue Service, 925 F . Supp. 271,277 (D.N.J. 1996) (holding that the IRC "has the force of law which Congress gave it, with or without implementing regulations").*
>
> *An implementing regulation is not necessary if the Congressional mandate of the IRC provision is clear. Ganse, 892 F.Supp. at 225 (citations omitted). IRC 5 7408 authorizes action: to enjoin persons from engaging in the conduct specified in IRC $5 6700 and 6701. Those latter statutes impose penalties on persons who engage in the conduct set forth in the statutes (5 6700-promoting abusive tax shelters; $ 6701-aiding in the understatement of tax liability). IRC §7402(a) authorizes district courts to issue injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws." These laws were enacted to give the IRS more effective tools to deal with "the growing phenomenon of abusive tax shelters." S. Rep. No. 97-494, at 266 (1982), reprinted in 1982 U.S.C.C.A.N. 781, 1014. The statutes are clear and express Congress's desire for capable tax law enforcement. Plaintiff has failed to show that the IRC statutes relevant to this action are so ambiguous or unclear as to require the promulgation of implementing regulations.*

The main argument of the Respondent above was to cite the case of *Granse v. United States, 892 F.Supp. 219,* 224 (D.Minn. 1995). You can view that case below:

http://famguardian.org/TaxFreedom/Authorities/Circuit/GranseVU.S.-892F.Supp219-1995.pdf

You can read the gist of that motion to dismiss in the following free pamphlet on our website:

Federal Enforcement Authority Within States of the Union, Form #05.032
http://sedm.org/Forms/FormIndex.htm

We will now use the remainder of this section to present the forceful argument to the Court appearing in the Plaintiff's reply brief to the above response to a motion to dismiss. The Respondent is the United States, and a U.S. Attorney was using the bogus "no implementing regulations" argument to "hoodwink" the Plaintiff.

INTRODUCTION

Respondent is trying to divert attention from the core issues of this Motion to Dismiss, which are summarized once again as follows:

1. Congress has no enforcement authority outside of federal territory against anything other than its own officers and employees in the official conduct of their constitutionally authorized duties.

> *"It is no longer open to question that **the general government, unlike the states**, Hammer v. Dagenhart, 247 U.S. 251, 275 , 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724, **possesses no inherent power in respect of the internal affairs of the states; and emphatically not with regard to legislation.**"*
> *[Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855 (1936)]*

2. Statutes which accomplish enforcement are called laws having "general applicability and legal effect".

> *44 U.S.C. §1505(a) Documents to be Published in the Federal Register*
>
> *For the purposes of this chapter every document or order which prescribes a penalty has general applicability and legal effect.*

Any statute that prescribes a penalty is an enforcement statute, based on the above. All penalties adversely affect constitutional rights.

3. Due process of law requires "reasonable notice" of all laws that might be enforced to the persons they may be enforced against. See:

Requirement for Reasonable Notice, Form #05.022 http://sedm.org/Forms/FormIndex.htm

4. Absent publication in the Federal Register of implementing regulations authorizing enforcement, no enforcement may lawfully be attempted. 5 U.S.C. §552(a).

> *5 U.S.C. §552(a): Public information; agency rules, opinions, orders, records, and proceedings*
>
> *Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.*

5. There are only three exceptions to the requirement for publication in the Federal Register of implementing enforcement regulations, which are:
   5.1. A military or foreign affairs function of the United States. 5 U.S.C. §553(a)(1) .
   5.2. A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 5 U.S.C. §553(a)(2) .
   5.3. Federal agencies or persons in their capacity as officers, agents, or employees thereof. 44 U.S.C. §1505(a)(1).
6. This proceeding involves penalties, and therefore is an enforcement proceeding. The target of this enforcement proceeding can only lawfully be the "person" defined in 26 U.S.C. §6671(b):

> *TITLE 26 > Subtitle F > CHAPTER 68 > Subchapter B > PART I > § 6671*
> *§ 6671. Rules for application of assessable penalties*
>
> *(b) Person defined*
>
> *The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

7. I am NOT the "person" defined above and the Respondent has never proven that I am or contradicted my affidavit under penalty of perjury that I am NOT. Therefore he agrees, pursuant to Fed.Rul.Civ.Proc. 8(b)(6). Failure to deny is an admission.
8. The burden of proof imposed upon the Respondent is to produce ONE of the following two sources of evidence proving that he has the authority to compel compliance within the context of these injunction proceedings:
   8.1. Enforcement regulations for the statutes cited as authority, being 26 U.S.C. §6700, 6701, 7402, and 7408.
   8.2. Proof that the Plaintiff is a member of one of the following three groups for which implementing enforcement regulations are NOT required:
      8.2.1. A military or foreign affairs function of the United States. 5 U.S.C. §553(a)(1).
      8.2.2. A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 5 U.S.C. §553(a)(2).
      8.2.3. Federal agencies or persons in their capacity as officers, agents, or employees thereof. 44 U.S.C. §1505(a)(1).
9. The above requirements originate from the two central types of conduct the government writes legislation for:
   9.1. Private conduct: Conduct of private parties who are not part of the government in their private lives and affairs. Generally, the purpose of the Constitution is to protect this kind of Conduct from any exertion of government legislative authority:

> *"The power to "legislate generally upon" life, liberty, and property, as opposed to the "power to provide modes of redress" against offensive state action, was "repugnant" to the Constitution. Id., at 15. See also United States v. Reese, 92 U.S. 214, 218 (1876); United States v. Harris, 106 U.S. 629, 639 (1883); James v. Bowman, 190 U.S. 127, 139 (1903). Although the specific holdings of these early cases might have been superseded or modified, see, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); United States v. Guest, 383 U.S. 745 (1966), their treatment of Congress' §5 power as corrective or preventive, not definitional, has not been questioned."*
> *[City of Boerne v. Florez, Archbishop of San Antonio, 521 U.S. 507 (1997)]*

9.2. Public conduct: Conduct of government employees, officers, and agents in the official conduct of their employment, contracts, or franchises.

> *"**The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer.** We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v. Johnson, 425 U.S. 238, 247 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. O'Connor v. Ortega, 480 U.S. 709, 723 (1987) (plurality opinion); id., at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. Gardner v. Broderick, [497 U.S. 62, 95] 392 U.S. 273, 277-278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. Connick v. Myers, 461 U.S. 138, 147 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. Public Workers v. Mitchell, 330 U.S. 75, 101 (1947); Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 556 (1973); Broadrick v. Oklahoma, 413 U.S. 601, 616-617 (1973)."*
> *[Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)]*

10. The only lawful subject of enforcement proceedings are "public officers" of the government, which includes those engaged in federal franchises. The ability to regulate "private conduct" is repugnant to the constitution. The only "individual" and "person" who is the proper lawful subject of the I.R.C. can only be a federal officer or instrumentality pursuant to 26 U.S.C. §6671(b) and 26 U.S.C. §7343. That is why the levy statute within Title 26 says it only applies to officers, employees, and instrumentalities of the government:

> *Subtitle F > CHAPTER 64 > Subchapter D > PART II > § 6331*
> *§ 6331. Levy and distraint*
>
> *(a) Authority of Secretary*
>
> *If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. **Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia,** by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.*

If the Respondent disagrees, he is demanded to rebut the content of the following and the admissions at the end or forever be the subject of an estoppel and laches in connection with his assertion later:

Why Your Government is Either a Thief or You are a "Public Officer" for Income Tax Purposes, Form #05.008 http://sedm.org/Forms/FormIndex.htm

11. Because the only thing the government can lawfully regulate is "public conduct", those engaged in "private conduct" can only become the subject of government enforcement when implementing regulations are published in the Federal Register for each statute sought to be enforced. Plaintiff is not acting as such an officer in the context of this proceeding and it is an unconstitutional deprivation of his liberty to either "PRESUME" that he is or to enforce the provisions of franchises against people such as himself who:
    11.1. Are not consensually participating in any government franchise and have notified government of same.
    11.2. Have notified the government officially that the ONLY way their consent can be procured to participate in federal franchises is IN WRITING with his signature, where all rights surrendered and the specific "benefits" thereby associated are described in detail.
    11.3. Identify acceptance of any government benefit as an injury rather than a privilege.
    11.4. Derive no benefits therefrom.
    11.5. Have officially and repeatedly notified the government that that any applications to participate on file are withdrawn. This includes SSA form SS-5.
    11.6. Are not entitled to derive any benefit from the government.
    11.7. Have consistently rebutted any evidence that might connect them to the "trade or business" franchise, such as IRS Forms W-2, 1042S, 1098, and 1099.

11.8. Refuse to sign contracts with the government to participate, such as IRS form W-4, which the regulations identify as an "agreement. See 26 CFR §31.3401(a)-3(a).

12. Plaintiff has examined the Parallel Table Of Authorities and searched the entire 26 CFR for enforcement regulations falling under Part 1 of 26 CFR, the income tax. No such provisions exist and therefore the government must be presuming that I am a member of one of the three groups specifically exempted from the requirement for publication of implementing enforcement regulations in the Federal Register. I state under penalty of perjury that I am NOT a member of any of these groups and that the government has no authority to pursue this enforcement action unless and until it produces evidence signed under penalty of perjury that I am a member of one of the three groups specifically exempted from the requirement for implementing regulations, being:
    12.1. A military or foreign affairs function of the United States. 5 U.S.C. §553(a)(1) .
    12.2. A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 5 U.S.C. §553(a)(2) .
    12.3. Federal agencies or persons in their capacity as officers, agents, or employees thereof. 44 U.S.C. §1505(a)(1).

Since the Respondent has not satisfied the burden of proof imposed upon him as described above to demonstrate that he has authority to undertake this enforcement action, then he agrees that he has no enforcement authority. There is no controversy before this court, the Respondent is in default, and the government's enforcement action MUST be dismissed as a matter of law.

The remainder of this section will address why the cases cited by the Respondent are inapposite, irrelevant, and meritless.

REBUTTAL OF USE OF GRANSE CASE AND OTHERS

The only case cited by the Respondent, which is attached hereto and marked as Exhibit 2, is inapplicable to any of the circumstances of the Plaintiff described under penalty of perjury in the Complaint, Affidavit of Material Facts, Docket #5, for reasons set forth in below.

1. Karl G. Granse was identified by the Court as a "taxpayer", which is defined in 26 U.S.C. §7701(a)(14) as "any person subject to any internal revenue tax". That means he was subject to the franchise agreement codified within the Internal Revenue Code Subtitle A.

> *"The issues before the Court are limited to the two matters described in section 7429(g) of the Code: The reasonableness of the decision to make the jeopardy assessment and the reasonableness of the amount of the assessment. The Government bears the burden of proof with respect to the former issue, 26 U.S.C. § 7429(g)(1); **the taxpayer** bears the burden of proof with respect to the latter issue, 26 U.S.C. § 7429(g)(2); e.g., Central de Gas de Chihuahua, S.A., v. United States, 790 F.Supp. 1302 (W.D. Tex. 1992). The Court's review under section 7429 is de novo; the Court is not limited to the information available to the IRS at the time the assessment was made, but can also consider any information which subsequently becomes available. Kerness v. United States, Civ. No. 5-81-22, 1981 WL 1813, at * 2 (D. Minn. June 26, 1981) (report and recommendation), adopted by 1981 WL 1959 (D. Minn. Jun 24, 1981); Abercrombie v. United States, 46 A.F.T.R.2d (P-H) P 80-5274, at 80-5891 (D.S.C. Sept. 3, 1980). Given the summary nature of the proceedings, the Court cannot concern itself with a determination of **the taxpayer's** actual tax liability. Friko Corp. v. Commissioner of Internal Revenue, 26 F.3d 1139, 1141 (D.C. Cir. 1994) (citing Lindholm v. United States, 808 F.Supp. 1, 2 (D.D.C. 1992)); Kerness, 1981 WL 1813, at * 1."*
> [Granse v. United States, *892 F.Supp. 219, 224 (D.Minn. 1995)]*

Karl Granse is not described in the ruling as disputing that label of "taxpayer" used by the Court to describe him. Consequently, he was bound to obey the I.R.C. for all earnings he had that were "effectively connected with a trade or business" and which were subject to the I.R.C. because they involved a "public purpose" and a government franchise.

2. Karl Granse also cited provisions from the I.R.C. as the authority for his suit. Namely, he cited 26 U.S.C. §7429(b). That provision contains remedies which are *only* available to "taxpayers". It says that right in the statute itself:

> *TITLE 26 > Subtitle F > CHAPTER 76 > Subchapter B > § 7429*
> *§ 7429. Review of jeopardy levy or assessment procedures*
>
> *(2) Request for review*

> *Within 30 days after the day on which the **taxpayer** is furnished the written statement described in paragraph (1), or within 30 days after the last day of the period within which such statement is required to be furnished, the **taxpayer** may request the Secretary to review the action taken.*

Only franchisees called "taxpayers" who are subject to the I.R.C. may cite the above provision or any other provision of the I.R.C. The U.S. Supreme Court has agreed with this conclusion, when it ruled on this subject:

> *"The Government urges that **the Power Company is estopped to question the validity of the Act creating the Tennessee Valley Authority**, and hence that the stockholders, suing in the right of the corporation, cannot [297 U.S. 323] maintain this suit. ….. **The principle is invoked that one who accepts the benefit of a statute cannot be heard to question its constitutionality. Great Falls Manufacturing Co. v. Attorney General, 124 U.S. 581; Wall v. Parrot Silver & Copper Co., 244 U.S. 407; St. Louis Casting Co. v. Prendergast Construction Co., 260 U.S. 469.**"*
> *[Ashwander v. Tennessee Valley Auth., 297 U.S. 288 (1936)]*

The Plaintiff, on the other hand, has *never* availed himself of any "privilege", benefit, or deduction arising from any provision of the I.R.C. "trade or business" franchise agreement during the period in question and has instead used inter alia, the Constitution, his rights, and prior U.S. Supreme Court decisions, and positive law as the only basis for his defense. Plaintiff instead has consistently identified himself in the Petition and all subsequent pleadings as a "nontaxpayer", and not a "taxpayer" under 26 U.S.C. §7701(a)(14), who is therefore not subject to any provision within the I.R.C. franchise agreement. See Complaint, Affidavit of Matl Facts, Docket #5, p. 10, para. 4.A. Furthermore, the Respondent has failed in his legal pleadings and Motions to disprove these assertions, which means that he has defaulted and agrees that the Plaintiff is a "nontaxpayer" not subject to the I.R.C. pursuant to Federal Rule of Civil Procedure 8(b)(6). Failure to deny constitutes an admission pursuant to this rule.

3. The Federal Courts agree that "nontaxpayers" are *not* subject to the I.R.C. franchise agreement. To wit:

> *"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..."*
> *[Long v. Rasmussen, 281 F. 236 (1922)]*

> *"Revenue Laws relate to taxpayers and not to non-taxpayers. The latter are without their scope. No procedures are prescribed for non-taxpayers and no attempt is made to annul any of their Rights or Remedies in due course of law. With them Congress does not assume to deal and they are neither of the subject nor of the object of federal revenue laws."*
> *[Economy Plumbing & Heating v. U.S., 470 F2d. 585 (1972)]*

4. Karl Granse was the Plaintiff who initiated the suit in question. He could only have initiated the suit by satisfying Fed.Rule.Civ.Proc. 17(b), which requires that he either have a domicile on federal territory (which excludes states of the Union, and which are "foreign states" for the purposes of federal legislative jurisdiction), or that he is exercising agency, contracts, or employment on behalf of a corporation which has a domicile inside a federal enclave or U.S. territory. In Granse's case, he could only have been exercising the latter, which is agency of a federal corporation, because he was identified in the ruling as maintaining a domicile in Michigan rather than the District of Columbia, as identified in 26 U.S.C. §7701(a)(39) and 26 U.S.C. §7408(c) . Therefore, *Granse* could only have initiated the suit as an "employee", "officer", agent, or fiduciary of the federal corporation known as the "United States" and which is defined in 28 U.S.C. §3002(15)(A) as "a federal corporation". This is consistent with his also being engaged in the "trade or business" franchise by virtue of having the Currency Transaction Report (CTR) filed against him by the bank that maintained the account which the IRS attempted to seize. A "trade or business" is defined as "the functions of a public office" in 26 U.S.C. §7701(a)(26), and all public offices *must* by law maintain a domicile in the District of Columbia under 4 U.S.C. §72 and under Article 1, Section 8, Clause 17 of the Constitution. The circumstances of the Plaintiff, however, are entirely different. His Complaint identified his domicile as no place inside the federal "United States" (see 26 U.S.C. §7701(a)(9) and (a)(10)) and the Affidavit of Material Facts indicated that he was not exercising any federal contracts or agency. See Docket #5, Aff. Of Matl. Facts, starting on p. 5, and in particular, paragraph 6 on p. 16. In that portion of the Petition, Plaintiff also indicated that he is not engaged in the "trade or business" franchise and he asserted the fact that he is a "nontaxpayer" not subject to the I.R.C. Therefore, the *Granse* case is entirely off point and consequently is inapplicable in the instant Matter. Thus, the circumstances, facts, and ruling in Granse are wholly irrelevant and have no bearing or relationship to the circumstances of the Plaintiff.

5. The behavior that made Karl Granse subject to the I.R.C. as a "taxpayer" was the Currency Transaction Report (CTR), Form 8300, which connected his deposits at the bank with the "trade or business" franchise and associated excise tax.

Granse apparently failed to dispute or correct this obviously false report. Therefore, by his own ignorance and omission, Karl Granse was justly presumed to be a "taxpayer" who, unlike the Plaintiff, was subject to the Internal Revenue Code Subtitle A franchise agreement. It is important to point out the undisputed, conclusive fact that receipt of currency not in the course of a "trade or business" is NOT reportable under 31 U.S.C. §5331. The proof of this fact is contained in the Code of Federal Regulations, to wit:

> *31 CFR §103.30(d)(2) General*
>
> *(2) **Receipt of currency not in the course of the recipient's trade or business**.*
>
> ***The receipt of currency in excess of $10,000 by a person other than in the course of the person's trade or business is not reportable under 31 U.S.C. 5331**.*
>
> *[Emphasis added]*

Therefore, Karl Granse, based on the CTR form 8300 that was filed against him and which he apparently never disputed according to the Court, was engaged in a privileged, excise taxable activity called a "trade or business" and he thus was a "taxpayer". You will note, for instance, that 26 CFR §1.1-1(a)(2)(ii) identifies "trade or business" income as taxable "gross income".

> *NORMAL TAXES AND SURTAXES*
> *DETERMINATION OF TAX LIABILITY*
> *Tax on Individuals*
> *Sec. 1.1-1 Income tax on individuals.*
>
> *(a)(2)(ii) For taxable years beginning after December 31, 1970, **the tax imposed by section 1(d) [married individuals filing separately], as amended by the Tax Reform Act of 1969, shall apply to the income effectively connected with the conduct of a trade or business in the United States by a married alien individual who is a nonresident of the United States for all or part of the taxable year or by a foreign estate or trust**. **For such years the tax imposed by section 1(c) [unmarried individuals], as amended by such Act, shall apply to the income effectively connected with the conduct of a trade or business in the United States by an unmarried alien individual (other than a surviving spouse) who is a nonresident of the United States for all or part of the taxable year.** See paragraph (b)(2) of section 1.871-8." [26 CFR § 1.1-1]*

For further details, see also Exhibit 3, entitled "The Trade or Business Scam", which thoroughly analyzes exactly what the I.R.C. Subtitle A franchise agreement imposes an excise tax upon, which is "trade or business" activity. Mr. Granse's circumstance, however, is *not* the case with the Plaintiff. Plaintiff has vigorously rebutted and sent in correction forms for all evidence which might wrongfully and illegally associate him with such taxable activities, such as:

5.1. Erroneous 1099 forms.
5.2. Erroneous W-2 forms.
5.3. Erroneous Currency Transaction Reports, Form 8300.
5.4. Erroneously or unlawfully filed or executed Substitute for Returns.

6. Karl Granse, by his omission, also created a prima facie presumption that he is a domiciliary of the federal "United States" in the process of opening the bank account which connected him to a "trade or business". He did not provide to the bank IRS form W-8, but instead provided a Social Security Number in its place when he opened the account. Those who do not provide W-8BEN forms are presumed to be "U.S. persons" subject to the I.R.C.. A "U.S. person" is defined in 26 U.S.C. §7701(a)(30) as either a "U.S. citizen" or a "resident", both of whom have in common a legal "domicile" in the federal "United States", which is defined in 26 U.S.C. §7701(a)(9) and (a)(10) as *only* the District of Columbia and whose definition is not expanded anywhere else in I.R.C. Subtitle A to include any other place. Therefore, the definition does not include any of the 50 Union states united under the federal Constitution.

> *"**Expressio unius est exclusio alterius**. A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*
> *[Black's Law Dictionary, Sixth Edition, p. 581]*

Consequently, Carl Granse's behavior in opening the bank account which was the subject of the suit created the rebuttable presumption that he was a "U.S. person" subject to the I.R.C. as a "taxpayer", who was engaged in a "trade or business" because of the CTR filed against him, and who maintained a domicile in the District of Columbia as required under 26 U.S.C. §7701(a)(39) and 26 U.S.C. §7408(c). By contrast, the Plaintiff:

6.1. Has accurately reflected his status as a "nonresident alien" for all financial accounts that he maintains.
6.2. When asked to file "returns", has submitted the correct form, the 1040NR, and indicated no liability on said form.

Therefore, there is no evidence in the Record of the instant matter, or in the possession of the Respondent which would create a false and incorrect presumption that the Plaintiff is a "U.S. person" subject to federal jurisdiction or to this Court, or who is engaged in the privileged activity known as a "trade or business" which would make him a "taxpayer" subject to the I.R.C.. The foregoing facts mean that the Plaintiff's situation and circumstances are entirely different from the facts in *Granse.* Plaintiff is a "nontaxpayer" and Granse is a "taxpayer. It is a fact that the Plaintiff is not a "U.S. person" and that Granse, through is actions and his own behavior in opening the bank account, created the rebuttable presumption that he, Granse, was a "U.S. person". Therefore, the *Granse* case is off point and irrelevant to the instant Matter. The Respondent's disingenuous reliance upon Granse exposes the Respondent's faulty legal reasoning and the Court should not place any credence or reliability in the Respondent's Opposition Motion.

7. The excise taxable franchise activity, a "trade or business", which Karl Granse was engaged in as documented by the Currency Transaction Report, Treasury Form 8300, filed against him, is defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office". That "public office" is in the United States government and that office is identified by the U.S. Supreme Court essentially as a business partnership with the U.S. Government.

> *"**All the powers of the government must be carried into operation by individual agency, either through the medium of public officers, or contracts made with individuals.** Can any public office be created, or does one exist, the performance of which may, with propriety, be assigned to this **association [or trust], when incorporated? If such office exist, or can be created, then the company may be incorporated, that they may be appointed to execute such office. Is there any portion of the public business performed by individuals upon contracts, that this association could be employed to perform, with greater advantage and more safety to the public, than an individual contractor? If there be an employment of this nature, then may this company be incorporated to undertake it.***
>
> ***There is an employment of this nature.** Nothing can be more essential to the fiscal concerns of the nation, than an agent of undoubted integrity and established credit, with whom the public moneys can, at all times, be safely deposited. Nothing can be of more importance to a government, than that there should be some capitalist in the country, who possesses the means of making advances of money to the government upon any exigency, and who is under a legal obligation to make such advances. For these purposes the association would be an agent peculiarly suitable and appropriate. [. . .]*
>
> *The mere creation of a corporation, does not confer political power or political character. So this Court decided in Dartmouth College v. Woodward, already referred to. If I may be allowed to paraphrase the language of the Chief Justice, I would say, a bank incorporated, is no more a State instrument, than a natural person performing the same business would be. If, then, a natural person, engaged in the trade of banking, should contract with the government to receive the public money upon deposit, to transmit it from place to place, without charging for commission or difference of exchange, and to perform, when called upon, the duties of commissioner of loans, would not thereby become a public officer, how is it that this artificial being, created by law for the purpose of being employed by the government for the same purposes, should become a part of the civil government of the country? Is it because its existence, its capacities, its powers, are given by law? because the government has given it power to take and hold property in a particular form, and to employ that property for particular purposes, and in the disposition of it to use a particular name? because the government has sold it a privilege [22 U.S. 738, 774] for a large sum of money, and has bargained with it to do certain things; is it, therefore, a part of the very government with which the contract is made?*
>
> ***If the Bank be constituted a public office, by the connexion between it and the government, it cannot be the mere legal franchise in which the office is vested; the individual stockholders must be the officers.** Their character is not merged in the charter. This is the strong point of the Mayor and Commonalty v. Wood, upon which this Court ground their decision in the Bank v. Deveaux, and from which they say, that cause could not be distinguished. Thus, aliens may become public officers, and public duties are confided to those who owe no allegiance to the government, and who are even beyond its territorial limits.*
>
> ***With the privileges and perquisites of office, all individuals holding offices, ought to be subject to the disabilities of office. But if the Bank be a public office, and the individual stockholders public officers, this principle does not have a fair and just operation.** The disabilities of office do not attach to the stockholders; for we find them every where holding public offices, even in the national Legislature, from which, if they be public officers, they are excluded by the constitution in express terms.*

> ***If the Bank be a public institution of such character as to be justly assimilated to the mint and the post office, then its charter may be amended, altered, or even abolished, at the discretion of the National Legislature. All public offices are created [22 U.S. 738, 775] purely for public purposes, and may, at any time, be modified in such manner as the public interest may require. Public corporations partake of the same character. So it is distinctly adjudged in Dartmouth College v. Woodward. In this point, each Judge who delivered an opinion concurred. By one of the Judges it is said, that '*** *public corporations are generally esteemed such as exist for public political purposes only, such as towns, cities, parishes and counties; and in many respects they are so, although they involve some private interests; but, strictly speaking, public corporations are such only as are founded by the government for public purposes, where the whole interest belongs also to the government.* ***If, therefore, the foundation be private, though under the charter of the government, the corporation is private, however extensive the uses may be to which it is devoted, either by the bounty of the founder, or the nature and objects of the institution. For instance, a bank, created by the government for its own uses, whose stock is exclusively owned by the government, is, in the strictest sense, a public corporation. So, a hospital created and endowed by the government for general charity. But a bank, whose stock is owned by private persons, is a private corporation, although it is erected by the government, and its objects and operations partake of a public nature. The same doctrine may be affirmed of insurance, canal, bridge, and turnpike companies. In all these cases, the uses may, in a certain sense, be called public,*** *but the corporations are private; as much [22 U.S. 738, 776] so, indeed, as if the franchises were vested* ***in a single person.[. . .]***
>
> *In what sense is it an instrument of the government? and in what character is it employed as such? Do the government employ the faculty, the legal franchise, or do they employ the individuals upon whom it is conferred? and what is the nature of that employment? does it resemble the post office, or the mint, or the custom house, or the process of the federal Courts?*
>
> *The post office is established by the general government. It is a public institution. The persons who perform its duties are public officers. No individual has, or can acquire, any property in it. For all the services performed, a compensation is paid out of the national treasury; and all the money received upon account of its operations, is public property. Surely there is no similitude between this institution, and an association who trade upon their own capital, for their own profit, and who have paid the government a million and a half of dollars for a legal character and name, in which to conduct their trade.*
>
> *Again: the business conducted through the agency of the post office, is not in its nature a private business. It is of a public character, and the [22 U.S. 738, 786] charge of it is expressly conferred upon Congress by the constitution. The business is created by law, and is annihilated when the law is repealed. But the trade of banking is strictly a private concern. It exists and can be carried on without the aid of the national Legislature. Nay, it is only under very special circumstances, that the national Legislature can so far interfere with it, as to facilitate its operations.*
>
> *The post office executes the various duties assigned to it, by means of subordinate agents. The mails are opened and closed by persons invested with the character of public officers. But they are transported by individuals employed for that purpose, in their individual character, which employment is created by and founded in contract. To such contractors no official character is attached. These contractors supply horses, carriages, and whatever else is necessary for the transportation of the mails, upon their own account. The whole is engaged in the public service. The contractor, his horses, his carriage, his driver, are all in public employ. But this does not change their character. All that was private property before the contract was made, and before they were engaged in public employ, remain private property still. The horses and the carriages are liable to be taxed as other property, for every purpose for which property of the same character is taxed in the place where they are employed. The reason is plain: the contractor is employing his own means to promote his own private profit, and the tax collected is from the individual, though assessed upon the [22 U.S. 738, 787] means he uses to perform the public service. To tax the transportation of the mails, as such, would be taxing the operations of the government, which could not be allowed. But to tax the means by which this transportation is effected, so far as those means are private property, is allowable; because it abstracts nothing from the government; and because, the fact that an individual employs his private means in the service of the government, attaches to them no* ***immunity whatever."***
> *[Osborn v. Bank of U.S., 22 U.S. 738 (1824)]*

Subtitle A of the I.R.C. is a franchise agreement that exclusively governs the relationship between U.S. government and those pursuing federal franchises such as employment, contracts, agency, or benefits. It regulates the private/contractual business partnership and relationship called a "trade or business". Consent to abide by the contract and therefore to be called a "taxpayer" is conveyed by signing and submitting under penalty of perjury the IRS form W-4, IRS form 1099, IRS Form 1040, and the Currency Transaction Reports (CTRs), all of which if left unrebutted produce evidence of consent to the contract. Since Karl Granse did not argue against his alleged status as a "taxpayer", which is a "person" engaged in a privileged type of federal employment called a "trade or business" as defined in 26 U.S.C. §7701(a)(26), and since he clearly did not rebut the erroneous evidence wrongfully and incorrectly linking him to that relationship, then both the Court in his case, and the Plaintiff agree that he should obey the contract terms found in Subtitle A of the I.R.C. This in no way is the case, however, with the Plaintiff, who has rebutted all erroneous reports that might connect him to "trade or business" activity, has rescinded participation in Social Security (see

Docket #28, Exhibit 2 entitled "Resignation of Compelled Social Security Trustee"), has vociferously argued against any identification of him as being a "taxpayer", and vociferously refused any federal entitlement or benefit.

8. Because Karl Granse was engaged in the "trade or business" excise taxable franchise, then under 26 U.S.C. §7701(a)(26), he was engaged in a "public office". A public office is a type of federal employment or agency which is: (1) Created by contract or agreement or other type of individual consent; (2) Requires consent of parties to the agreement in some form; (3) Is implemented through private law, which applies to special persons and things known as public employees or contractors. Because a "public office" is a type of federal employment, then those who are party to the private law contract found in I.R.C. Subtitle A become federal contractors or "employees" who are explicitly exempted by the Federal Register Act, 44 U.S.C. §1505(a)(1), from the requirement for implementing regulations.

> *TITLE 5 > PART I > CHAPTER 5 > SUBCHAPTER II > § 553*
> *§ 553. Rule making*
>
> *(a) This section applies, according to the provisions thereof, except to the extent that there is involved—*
>
> *(1) a military or foreign affairs function of the United States; or*
>
> *(2) **a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.***

Note the above exclusion of the requirement for publishment of implementing regulations: "*a matter relating to agency management*". A "public office" or the "trade or business" activity that creates federal agency on the part of those engaged in the franchise activity are examples of situations that would certainly *not* require implementing regulations and which would certainly be subject to regulation by direct Congressional statutory enactment. Congress has always had *direct* control over its employees in the Executive Branch and it would be ludicrous for any Court or litigant to attempt to interfere with that direct supervisory role by requiring effectively that the Executive Branch, which is its subordinate Servant of the Legislative Branch, must write a regulation interpreting a direct command from its Master, before that command may be enforced by the Judicial Branch. However, that same relationship does not apply to the Sovereigns in the states of the Union, who all three branches of government were created to serve and protect. As repeatedly pointed out in the Petition to Dismiss, Dockets 42 and 43, the requirement for implementing regulations applies to every subject of Congressional legislation EXCEPT those exceptions explicitly spelled out in the Federal Register Act, 44 U.S.C. §1505(a)(1), and the Administrative Procedures Act, 5 U.S.C. §553(a). The reason for this is clear: Congress, which is the servant of the Sovereign People, was established exclusively to protect the Constitutional and natural rights of its Master, We The People. It demonstrates this commitment to "protection" of Constitutional Rights by a writing and publishing implementing regulations in the Federal Register, which satisfies the Constitutional requirement for "due notice" to the persons affected by any law or regulation. Only persons domiciled in states of the Union who are *not* a party to any federal franchise contract, employment, or agency, can have such Constitutional rights in relation to the national government. Franchisees called federal employees, agents, contractors, and the military DO NOT have such rights and therefore need not be part of the "notice and comment" process that is inherent in the rulemaking process so as to protect rights and provide for "reasonable notice". The Supreme Court confirmed that public employees have *no* constitutional rights in relation to their employer, the federal government, when it said the following:

> *"**The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer.** We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v. Johnson, 425 U.S. 238, 247 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. O'Connor v. Ortega, 480 U.S. 709, 723 (1987) (plurality opinion); id., at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. Gardner v. Broderick, [497 U.S. 62, 95] 392 U.S. 273, 277-278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. Connick v. Myers, 461 U.S. 138, 147 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. Public Workers v. Mitchell, 330 U.S. 75, 101 (1947); Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 556 (1973); Broadrick v. Oklahoma, 413 U.S. 601, 616-617 (1973)."*
> *[Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)]*

There is no question in the mind of the Plaintiff that the Court ruled correctly in the case of *Granse*, by discounting the requirement for implementing regulations for Mr. Granse, who by his own omission and admission, was engaged in the privileged "public office" ("trade or business") franchise that created a type of federal "agency" and fiduciary relationship under 26 U.S.C. §6903 that made him liable to obey Subtitle A of the I.R.C. This is simply not the case with the Plaintiff, once again, who was ***not*** engaged in the "trade or business" franchise or any other type of federal employment or agency in the context of the disputed matters at any time during the period in question and who has overwhelming evidence to support such a conclusion, which is also reflected in his sworn Complaint, Docket #5. You will also note that the definition of "person" under the penalty provisions of the I.R.C. also confirms that the only "persons" liable for penalties, including injunctive relief under 26 U.S.C. §6700 and 6701, have a fiduciary relationship with the federal government created by the receipt of federal benefits, employment, contracts, or the exercise of other forms of "private law" based on personal consent. To wit:

> *TITLE 26 > Subtitle F > CHAPTER 68 > Subchapter B > PART I > § 6671*
> *§ 6671. Rules for application of assessable penalties*
>
> *(b) Person defined*
>
> *The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership,* ***who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.***
>
> *[Emphasis added]*

The "duty" which they are referring to above in the emphasized passage is the fiduciary duty created under 26 U.S.C. §6903 by declaring oneself a "public officer" engaged in the privileged "trade or business" franchise. Private law and private contract is the ***only*** way to create such a fiduciary relationship, and the Respondent at no time has ever produced any substantive evidence documenting the existence of such a relationship in the case of the Plaintiff. Positive law CANNOT create such a fiduciary relationship because it would impinge on the Constitutional Rights of the sovereigns in the states of the Union, which Congress may not lawfully do. That is why 1 U.S.C. §204 identifies the Internal Revenue Code as not being "positive law": It is instead "private law" and "special law" that only applies to specific persons and things who individually consent to be bound by it. This was admitted by the IRS itself in the following document:

> SEDM Exhibit #09.023
> http://sedm.org/Exhibits/ExhibitIndex.htm

See and rebut also the following, or remain silent if you agree:

Requirement For Consent, Form #05.003 http://sedm.org/Forms/FormIndex.htm

Once a party consents or even acts as though he consents to the franchise agreement codified in I.R.C. Subtitle A, he or she is considered to be "effectively connected with a trade or business in the United States". In effect, the act of consent "marries" a human being through private law to the state and makes them a "public officer" who is surety for a specific public office that is the "res" which is the only proper subject of this proceeding. That marriage proposal begins by selecting a "domicile" within the state and the marriage is consummated by the act of engaging in the privileged or excise taxable franchise called a "trade or business". Black's Law Dictionary, in fact, defines "commerce" as "intercourse", and intercourse is what consummates the marriage. Real marriage works the same way: Parties who "act" as though they are married and cohabit for some fixed period of time are treated under the common law in many states as though they are legally married. Therefore, the *Granse* case and all cases in which the litigant was a "taxpayer", a "U.S. person", or was engaged in a privileged activity such as a "trade or business" are simply irrelevant and inapplicable to the circumstances of the Plaintiff and this case.

9. Similar arguments made by Plaintiff in this section may also universally be applied to every other type of similar tax case the Respondent might wish to cite. This includes, for instance, *Gass v. United States Department of Treasury*, 216 F.3d 1087, 217 F.3d 1087 (10th Cir. 06/09/2000) and every other case the Plaintiff could find on the subject of the requirement for implementing regulations. Therefore, Plaintiff was unable to locate any stare decisis useful to this Court that would be applicable to or entirely compatible with the circumstances of the Plaintiff:
   9.1. Who is a "nontaxpayer" not subject to any provision of the I.R.C.

9.2. Who is a "nonresident alien" under 26 U.S.C. §7701(b)(1)(B)
9.3. All of whose earnings and property are a "foreign estate" as defined in 26 U.S.C. §7701(a)(31).
9.4. Who is nonresident to any United States Judicial District or Internal Revenue District.
9.5. Who has never consented to the foreign jurisdiction of this Court or made a "general appearance" or "special appearance".
9.6. Who is a "national" under 8 U.S.C. §1101(a)(21), but not a "U.S. citizen" under 8 U.S.C. §1401.
9.7. Who has no employment or agency or contracts or "public office" relationship with the federal government, nor is a recipient or qualified recipient of any federal benefit.
9.8. Who has refuted or rebutted all false reports of the receipt of "trade or business" income, such as W-2, 1099, and Currency Transaction Reports (IRS Form 8300).

If the Court and the Respondent would be so kind as to provide case law that satisfies all the above criteria applicable in the instant case, then Plaintiff would happily change his position.

10. The Respondent has mis-stated the cause of action in this case by over-generalizing it to unjustly advantage his position. Bouvier's Maxims of Law indicates that fraud lies in such generalities, and that it is a fraud to conceal a fraud, which means that counsel for the Respondent appears to have engaged in constructive fraud:

> *Fraus latet in generalibus.*
> *Fraud lies hid in general expressions.*
>
> *Fraus est celare fraudem.*
> *It is a fraud to conceal a fraud. 1 Vern. 270.*
>
> *[Bouvier's Maxims of Law, http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm]*

10.1. This Petition is ***NOT*** about whether the requirement for implementing regulations may be waived for franchisees, federal employees, contractors, fiduciaries, or agents such as *Granse* himself, because the Plaintiff agrees that no regulations are required for such a condition. Plaintiff does ***not*** dispute that such persons are "taxpayers". Respondent is self-servingly making the false, unconstitutional, and prejudicial "presumption" that ***everyone*** fits the description of a "taxpayer" engaged in a "trade or business" and this simply is not the case. Both 26 U.S.C. §7426 as well as the U.S. Supreme Court in *South Carolina v. Regan*, 465 U.S. 367 (1984) recognize the existence of "nontaxpayers" and so must the Respondent and this Court. . "Nontaxpayers" who have not forfeited their Constitutional rights by entering into the privileged "trade or business" or "public office" franchise or other contractual relationships with the government do in fact exist and ***do*** have Constitutional rights which this Court continues to have an affirmative duty to recognize and protect. Other Courts recognize the existence of these sovereign "nontaxpayers" and so should Respondent and this Court.

> *"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..."*
> *[Long v. Rasmussen, 281 F. 236 (1922)]*
>
> *"Revenue Laws relate to taxpayers and not to non-taxpayers. The latter are without their scope. No procedures are prescribed for non-taxpayers and no attempt is made to annul any of their Rights or Remedies in due course of law. With them Congress does not assume to deal and they are neither of the subject nor of the object of federal revenue laws."*
> *[Economy Plumbing & Heating v. U.S., 470 F2d. 585 (1972)]*

10.2. The main issue raised in this Petition to Dismiss ***instead*** is whether the requirement for implementing regulations may be waived ***without*** violating positive law found in the Federal Register Act, 44 U.S.C. §1505(a)(1) and the Administrative Procedure Act, 5 U.S.C. §553(a) in the case of those such as the Plaintiff who meet ***ALL*** of the criteria below. The *Granse* case cited by the Respondent does ***not*** answer this question because Granse did not meet all the criteria below as the Plaintiff does:

10.2.1. The Plaintiff is domiciled in a state of the Union, which is a "foreign state", or in some other foreign state or foreign country.

> *"Generally, the states of the Union sustain toward each other the relationship of independent sovereigns or independent **foreign states**, except in so far as the United States is paramount as the dominating government, and in so far as the states are bound to recognize the fraternity among sovereignties established by the federal*

Constitution, as by the provision requiring each state to give full faith and credit to the public acts, records, and judicial proceedings of the other states..."
[81A Corpus Juris Secundum (C.J.S.) §29, legal encyclopedia]

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*"**Foreign states**. Nations which are outside the United States. Term may also refer to another state; i.e. a sister state.*

"The term "foreign nations," as used in the statement of the rule that the laws of foreign nations should be proved in a certain manner, should be construed to mean all nations and states other than that in which the action is brought; and hence one state of the Union is foreign to another, in the sense of that rule.

"A "foreign state" within statute providing for expatriation of American citizen who is naturalized under laws of foreign state is a country which is not the United States, or its possession or colony, an alien country, other than our own. Kletter v. Dulles, D.C.D.C., 111 F.Supp. 593, 598."
[Black's Law Dictionary, Sixth Edition, p. 648]

10.2.2. The Plaintiff does not have any contracts, agency, employment, or fiduciary duty with the federal government and does not participate in the "trade or business" franchise. The Respondent has never disagreed with these assertions and therefore agrees, pursuant to Fed.Rul.Civ.Proc. 8(b)(6). This means that Plaintiff has not surrendered any Constitutional rights through the operation of private law or special law such as 26 U.S.C. or 42 U.S.C. This also means that the Plaintiff has not surrendered sovereign immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. §1605. Therefore, the Courts may not flagrantly ignore the protection of the Constitutional rights of such persons as they do in the case of federal "employees"

*"**The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer.** We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v. Johnson, 425 U.S. 238, 247 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. O'Connor v. Ortega, 480 U.S. 709, 723 (1987) (plurality opinion); id., at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. Gardner v. Broderick, [497 U.S. 62, 95] 392 U.S. 273, 277 -278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. Connick v. Myers, 461 U.S. 138, 147 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. Public Workers v. Mitchell, 330 U.S. 75, 101 (1947); Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 556 (1973); Broadrick v. Oklahoma, 413 U.S. 601, 616 -617 (1973)."*
[Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)]

10.2.3. The Plaintiff is not in the military, which 5 U.S.C. §553(a) stipulates is excluded from the requirement for implementing regulations.

10.2.4. The Plaintiff is not engaged in any privileged or excise taxable activities such as a "public office" or a "trade or business" as defined in 26 U.S.C. §7701(a)(26).

10.2.5. The Plaintiff is a "nontaxpayer" and he is not a taxpayer as defined in 26 U.S.C. §7701(a)(14).

10.2.6. The Plaintiff is a "nonresident alien" as defined under 26 U.S.C. §7701(b)(1)(B).

10.2.7. The Plaintiff is a "national" under 8 U.S.C. §1101(a)(21) but not a "citizen" under 8 U.S.C. §1401. See and rebut Exhibit 7 attached to the Petition, Docket #5 if you disagree or remain silent if you agree.

10.2.8. Plaintiff is not an alien or an "individual" as defined in 26 CFR §1.1441-1(c)(3). All "individuals" are aliens within the Internal Revenue Code and those who are non-citizen nationals under 8 U.S.C. §1101(a)(21) are not "individuals" or "nonresident alien individuals".

10.2.9. The Plaintiff is has correctly reflected all of the above aspects of his legal status on every government form currently on file with the government and especially any withholding forms they may have submitted.

Plaintiff asserts that the failure of the Courts and the Respondent to recognize the existence of the rights of "nontaxpayers" and foreign sovereigns such as the Plaintiff that is at the heart of why the materials exist that the government would like to enjoin in this case. Unless and until the Court is willing to address and protect the rights of such sovereign Americans as those described above, it will be shirking its chief duty under the Constitution and will spawn further injustice and unlawful activity on the part of the Respondent and the Internal Revenue Service,

both within the context of this proceeding and more generally in the case of all Americans Nationals. To remain silent on such an important issue as this constitutes constructive fraud, and such an omission constitutes a conspiracy against rights in violation of 18 U.S.C. §241 and the Bill of Rights. Stated another way, the Plaintiff is simply asking where is the proof of consent to taxation as an ***individual***? Domicile is the usual source of said consent, but the Plaintiff has no domicile anywhere within the "United States". A free people cannot be free without the requirement for consent being enforced in EVERY human interaction, and especially at the point of interface between the Sovereign People and their servant government. This Court alluded to this requirement for consent in Docket # 20, where the Court said on p. 9 the following:

> *"Plaintiff's assertion that the United States or its counsel entered into a contract by virtue of quoting portions of his materials in the Complaint is unsupported by any authority. "An essential element of any contract is the consent of the parties, or mutual assent." Donovan v. RRL Corp., 26 Cal. 4th 261,270 (2001); Cal. Civ. Code 5 1550."*
> *[Order, Docket #20, p. 9]*

Well, if the United States must consent, then why doesn't the same equal protection of the law apply to the Plaintiff, and more generally to ALL Americans, in the case of Subtitle A of the Internal Revenue Code? Taxes pay for the support of government services which domiciliaries have consented in some way to procure and therefore pay for. The government is a corporation (see 28 U.S.C. §3002(15)(A)) and a business that delivers "protection" to its domiciliaries, and there is no reason why the services it offers cannot be just as market driven as any other industry. That consent to procure government services in the form of "protection" occurs by declaring a domicile within the jurisdiction of the government and by availing oneself of government franchises, neither of which Plaintiff nor any of the people he associates within the context of these proceedings, have done. Therefore, any effort to enforce the payment of "income taxes" to compensate the government for services that a human being does not lawfully, explicitly and voluntarily consent to receive ***in writing*** amounts to racketeering and an unlawful monopoly in violation of 18 U.S.C. §1951. Any attempt by the Dept. of Justice, the IRS, or this Court to compel participation in any tax "scheme" to collect monies for services that are ***not*** wanted and which the recipient of the services actually classifies as HARMFUL is practicing organized crime and extortion. Is this Court going to involve itself in a clear instance of racketeering and interference with the commercial affairs of those who do not choose to do business with it? This concept is at the heart of why the IRS calls our tax system a system of "voluntary compliance", because those who don't want the services or the benefits and who change their domicile to be outside of government jurisdiction, and who refuse to accept any government service or benefit have "un-volunteered" and no longer have any obligation to "comply" or "donate".

11. Respondent's serious error in his opposition originates from a magnanimous failure to recognize the important distinctions between "public employment" and "private employment". Over "private employment" and "private conduct" of the Plaintiff, this Court, and Congress itself, enjoys NO LEGISLATIVE OR ENFORCEMENT POWER. The U.S. Supreme Court acknowledged this fact when it ruled:

> *"The power to "legislate generally upon" life, liberty, and property, as opposed to the "power to provide modes of redress" against offensive state action, was "repugnant" to the Constitution. Id., at 15. See also United States v. Reese, 92 U.S. 214, 218 (1876); United States v. Harris, 106 U.S. 629, 639 (1883); James v. Bowman, 190 U.S. 127, 139 (1903). Although the specific holdings of these early cases might have been superseded or modified, see, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); United States v. Guest, 383 U.S. 745 (1966), their treatment of Congress' §5 power as corrective or preventive, not definitional, has not been questioned."*
> *[City of Boerne v. Florez, Archbishop of San Antonio, 521 U.S. 507 (1997)]*

Notice the emphasis above on the phrase "state action". The Internal Revenue Code Subtitle A is law mainly for "state actors" and "public officers" engaged in the "trade or business" franchise, none of whom require implementing regulations in order to be commanded by Congress. Plaintiff continues to assert that it is the most fundamental and Sacred duty of all duties of this Court and its officers to protect "private rights" coming under the purview of the federal Constitution. That responsibility of protection cannot be fulfilled by chronically and habitually making self-serving, prejudicial presumptions that have the injurious consequence of effectively making ***everyone*** throughout the country into presumed "public officers" who have no rights, all of whom are engaged in the "trade or business" (a "public office") franchise, which is the main method by which anyone can earn "gross income" under Subtitle A of the Internal Revenue Code.

12. There is no question that the Constitution confers upon Congress, under Article 4, Section 3, Clause 2, the authority "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the

United States". There is also no question that the mechanism it uses for doing that is passing "special law" or "private law" which only applies on federal territory, is not positive law, and usually applies only to its own franchisees such as employees, agents, contractors, benefit recipients, and the military, which are all exempted from the requirement for implementing regulations by the Federal Register Act and the Administrative Procedures Act. However, it DOES NOT have the authority to directly regulate ***private conduct*** within the states of the Union ***without*** the need for implementing regulations, as pointed out above. Most laws that Congress passes, in fact, are law for government, and ***not*** for the private citizen. That is why the Internal Revenue Code is not positive law and is special/private law that only applies to those engaged in consensual federal franchises, such as a "public office". All such "public offices" are the equivalent of federal property that is subject to the direct statutory supervision of Congress. However, for those who have not availed themselves of such "privileges", I.R.C. Subtitle A is as "foreign" as the laws of China are to the average American. The laws of China are not "law" for Americans. Likewise, Subtitle A is not "law" in the case of "nontaxpayers", but simply private law and a franchise agreement that applies to those who have consented to its provisions in some way and thereby become party to it. The burden of proof imposed on the government as moving party in such a circumstance is to produce written evidence of consent to become involved in such federal franchises. So far, the Respondent has refused his affirmative, fiduciary duty to satisfy this requirement and therefore defaulted to the position of the Plaintiff in the instant matter, in accordance with Federal Rule of Civil Procedure 8(b)(6).

13. There is no question that the Secretary has broad authority under 26 U.S.C. §7805(a) to write "all needful rules and regulations" to enforce the Internal Revenue Code. HOWEVER, neither he nor the IRS have the authority to:
    13.1. Waive any requirements imposed by the Bill of Rights upon his or their conduct in the context of persons domiciled in states of the Union and who are protected by the Bill of Rights.
    13.2. MAKE law, but only interpret and apply existing law.

> *"When enacting §7206(1) Congress undoubtedly knew that the Secretary of the Treasury is empowered to prescribe all needful rules and regulations for the enforcement of the internal revenue laws, so long as they carry into effect the will of Congress as expressed by the statutes. Such regulations have the force of law.* ***The Secretary, however, does not have the power to make law****, Dixon v. United States, supra."*
> *[United States v. Levy, 533 F.2d 969 (1976)]*

    13.3. Waive the requirements of any positive law, including the Federal Register Act, 44 U.S.C. §1505(a)(1) or the Administrative Procedures Act, 5 U.S.C. §553(a). These two acts positively require that any enforcement action that adversely affects the Constitutional rights of those domiciled in a state of the Union MUST have implementing regulations published in the Federal Register. This is a requirement imposed by the Fifth Amendment, which requires "due notice" to the persons whose rights are adversely affected. The Federal Register is the method of providing this "due notice" to the general public about laws "having general applicability and legal effect". The only exceptions are listed in these acts, which include ONLY federal employees, contractors, agents, benefit recipients, and members of the military. The Plaintiff is not a member of ANY of these restricted groups and therefore in his case, as a "nontaxpayer", implementing regulations ***are*** required for this case to proceed, because it constitutes an enforcement action which will adversely affect the Constitutional rights of the Plaintiff.
    13.4. Presume or assume anything that would adversely affect the Constitutional rights of those domiciled or present in a state of the Union, whether thorough regulation or statute. All presumption which prejudices constitutionally guaranteed rights is a violation of Constitutional due process and a tort. See:

> *Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction*, Form #05.017
> http://sedm.org/Forms/FormIndex.htm

    13.5. Assume that a l a human being not representing an office does not have Constitutional rights or is not protected by the Bill of Rights. This "presumption" would prejudice Constitutional rights and therefore be unconstitutional.
    13.6. Presume that a human being protected by the Constitution is federal franchisee called a "taxpayer", or an "employee", contractor, agent, fiduciary, benefit recipient, or "public officer" engaged in a "trade or business" without at least producing proof under penalty of perjury of consent to engage in the franchise. That evidence must come from someone with a personal knowledge who does not have a financial interest in the outcome. Such a "presumption" would prejudice Constitutional rights and therefore is unconstitutional. It would also have the practical result of slavery for the object of the presumption, because it would obligate the subject to satisfy all the obligations of federal employment without just compensation for his labor and effort, which would be involuntary servitude in violation of the Thirteenth Amendment. This false, prejudicial, and unconstitutional presumption, in fact, is the ONLY real basis employed by the Respondent to proceed and which it is the purpose of this Petition to invalidate because prejudicial and injurious.

14. Plaintiff emphasizes that no ruling of any federal court is sufficient to overturn the affirmative requirements of enacted positive law found in the Federal Register Act, 44 U.S.C. §1505(a)(1) and the Administrative Procedures Act, 5 U.S.C. §553(a). These acts unequivocally state that those who have Constitutional rights and who have not surrendered those rights by signing up for federal franchises or "public rights" can ***only*** have a federal law enforced against them AFTER an implementing regulation is published in the Federal Register, in satisfaction of the requirements of the Bill of Rights, which require "due notice" to the parties affected. The *Granse* case cited by the Respondent didn't declare these positive law requirements unconstitutional or invalidate them at all. Rather, it was completely consistent with the Petition to Dismiss by virtue of the fact that *Granse* was involved in a "public office" and a "trade or business". Federal courts may not amend or repeal a positive law. Their job is to ***interpret***, and not to ***make*** or overrule law that they view as Constitutional but "politically incorrect". "judicial activism" of the sort demanded by the Respondent which are aimed at expanding federal revenues and corruptly interfering with private commerce would involve the court in "political questions" beyond its reach:

> *"**Political questions**. Questions of which courts will refuse to take cognizance, or to decide, on account of their purely political character, or because their determination would involve an encroachment upon the executive or legislative powers.*
>
> *"Political questions doctrine" holds that certain issues should not be decided by courts because their resolution is committed to another branch of government and/or because those issues are not capable, for one reason or another, of judicial resolution. Islamic Republic of Iran v. Pahlavi, 116 Misc.2d 590, 455 N.Y.S.2d 987, 990.*
>
> *A matter of dispute which can be handled more appropriately by another branch of the government is not a "justiciable" matter for the courts. However, a state apportionment statute is not such a political question as to render it nonjusticiable. Baker v. Carr, 369 U.S. 186, 208-210, 82 S.Ct. 691, 705-706, 7 L.Ed.2d 663.*
> *[Black's Law Dictionary, Sixth Edition, pp. 1158-1159]*

15. This Court may not lawfully "assume", or "presume" any status or standing or condition of the Plaintiff which is contrary to that specified under penalty of perjury by the Plaintiff in his Petition, Docket #5 and subsequent pleadings. To do otherwise would be to prejudice Constitutionally guaranteed rights, to violate the oath of office of the judge, and violate the Declaratory Judgments Act, 28 U.S.C. §2201(a), which excludes the court from declaring or presuming any status other than that specified by the substantive evidence before it relating to a tax issue. The U.S. Supreme Court has also ruled that all "statutory presumptions" are unconstitutional, which also means by implication that all presumptions implemented through "judge-made law" which are ***equally*** prejudicial are ***also*** unconstitutional:

> *"(1) [8:4993] **Conclusive presumptions affecting protected interests:** A conclusive presumption may be defeated where its application would impair a party's constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party's due process and equal protection rights. [Vlandis v. Kline (1973) 412 U.S. 441, 449, 93 S.Ct 2230, 2235; Cleveland Bed. of Ed. v. LaFleur (1974) 414 US 632, 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit violates process]*
> *[Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34]*
>
> ---
>
> *"'It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.' 219 U.S., at 239 .*
>
> *Thus the Court held that presumptions, while often valid (and some of which, I think, like the presumption of death based on long unexplained absence, may perhaps be even salutary in effect), must not be allowed to stand where they abridge or deny a specific constitutional guarantee."*
> *[United States v. Gainly, 380 U.S. 63 (1965)]*

For this Court to "presume" any standing other than that explicitly declared in the Petition, Docket #5 and subsequent pleadings of the Plaintiff would prejudice the Constitutional rights of the Plaintiff and would be an unconstitutional tort for which the officers of this Court and the Respondent surrender their official immunity and become personally liable. At no time has Plaintiff ever surrendered his Constitutional rights by entering into any federal contracts, agency, or employment that still exists today. Therefore, this court may not make any of the following false presumptions without committing a tort which shall be named in the Cross Complaint to be filed shortly:

15.1. That the Plaintiff meets any of the exemptions to the requirement for implementing regulations found in 44 U.S.C. §1505(a)(1) or 5 U.S.C. §553(a). These provisions are positive law that cannot be overruled using false presumption by that which is ***not*** positive law, such as the Internal Revenue Code. 1 U.S.C. §204 says that the

Internal Revenue Code is not "positive law", and therefore is only "presumed" to be law. Since prejudicial and statutory presumptions are unconstitutional, then the Internal Revenue Code, by this statute, cannot be "presumed" to be law except in the case of those who have no Constitutional rights, which does NOT include the Plaintiff.

15.2. That the Internal Revenue Code is "positive law", or that at least the provisions cited by the Respondent as authority in this case are positive law, being 26 U.S.C. §6700, 6701, and 7408. To do otherwise is effectively to create a statutory presumption. Once again, the Respondent has not met the burden of proof that the statutes in question are positive law and therefore, they must be presumed to be the contrary until proven otherwise so as not to prejudice constitutional rights of the Plaintiff. The presumption of "innocent until proven guilty" applies here. That presumption implies that the Plaintiff is a "nontaxpayer" until positive law and evidence is used to prove that he is a "taxpayer"

15.3. That Plaintiff is a "taxpayer" subject to the I.R.C. as defined under 26 U.S.C. §7701(a)(14).

15.4. That Plaintiff is a "U.S. person" as defined under 26 U.S.C. §7701(a)(30).

15.5. That Plaintiff is engaged in any franchise or excise taxable activity, including a "trade or business" as defined in 26 U.S.C. §7701(a)(26).

15.6. That Plaintiff is ***the*** "person" subject to the penalty provisions of the I.R.C. and defined in 26 U.S.C. §6671(b) as being limited exclusively to "an officer or employee of a corporation".

15.7. That this court has any authority to expand any definition, including that in 26 U.S.C. §6671(b) above, without violating the rules of statutory construction and also thereby committing a tort by unconstitutionally creating jurisdiction through false "presumption" where none exists. This is called "legislating from the bench":

> *"**Expressio unius est exclusio alterius**. A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*
> *[Black's Law Dictionary, Sixth Edition, p. 581]*

15.8. That the Plaintiff ever made an "appearance" in this matter or gave his consent to the jurisdiction of this Court. Every pleading has been submitted as a petition under the First Amendment that is coerced and not consensual. Therefore, this court may not proceed in this civil matter without consent and must dismiss the case. The Declaration of Independence says that all just powers of government derive from the consent of the governed and I never gave my consent, therefore, this is an unjust proceeding.

15.9. That Plaintiff maintains a domicile within any United States Judicial District or Internal Revenue District. He has declared otherwise in his Affidavit of Material Facts, Docket #5.

15.10. That this court may involuntarily move the Plaintiff's domicile to the District of Columbia under 26 U.S.C. §7701(a)(39) and 26 U.S.C. §7408(c) *without* his explicit written consent and thereby involve itself in kidnapping and identity theft in violation of 18 U.S.C. §1201.

15.11. That this Court and the Respondent have any lawful authority to continue to mail "threatening communications" to a foreign country and foreign state, to the address of a nonresident such as the Plaintiff, in violation of 18 U.S.C. §877, which have enslaved and oppressed his Constitutional rights without satisfying the requirement for implementing regulations or at least without demonstrating the existence of some form of consent, private law, or special law whereby he made himself subject to the provisions of the Internal Revenue Code.

15.12. That there are injured parties within the jurisdiction of this Court located within the exterior limits of the judicial district. The Respondent has produced NONE so far, and therefore lacks standing. Because the Plaintiff is "innocent until proven guilty", this Court must presume that there are no injured parties and therefore no standing exist until proven otherwise.

15.13. That the Plaintiff ever made any promises or assurances about the effectiveness of any of the materials in question. He declares otherwise in his Petition under penalty of perjury.

15.14. That the Plaintiff, a nonresident alien and a foreign sovereign, ever forfeited his sovereign immunity by any explicit act under 28 U.S.C. §1605, and as required by 28 U.S.C. §1330.

15.15. That the requirements of the Minimum Contacts Doctrine/Longarm Jurisdiction have been satisfied by the Respondent, who has yet to demonstrate what the Plaintiff did to people within federal jurisdiction to cause him to surrender sovereign immunity under 28 U.S.C. §1605.

15.16. That the judge in this case maintains a domicile on federal territory as required by 28 U.S.C. §134(b) without submitting proof on the record that this is in fact the case.

15.17. That the Court may ignore any issue raised in this pleading and without admitting the truthfulness of it under the principle of Estoppel in pais:

> *"Silence is a species of conduct, and constitutes an implied representation of the existence of facts in question. When silence is of such character and under such circumstances that it would become a fraud, it will operate as an Estoppel."*
> *[Carmine v. Bowen, 64 A. 932]*

> *"Equitable estoppel, or estoppel in pais, is a term applied usually to a situation where, because of something which he has done or omitted to do, a party is denied the right to plead or prove an otherwise important fact. 2 The term has also been variously defined, frequently by pointing out one or more of the elements of, or prerequisites to, 3 the application of the doctrine or the situations in which the doctrine is urged. 4 The most comprehensive definition of equitable estoppel or estoppel in pais is that it is the principle by which a party who knows or should know the truth is absolutely precluded, both at law and in equity, from denying, or asserting the contrary of, any material fact which, by his words or conduct, affirmative or negative, intentionally or through culpable negligence, he has induced another, who was excusably ignorant of the true facts and who had a right to rely upon such words or conduct, to believe and act upon them thereby, as a consequence reasonably to be anticipated, changing his position in such a way that he would suffer injury if such denial or contrary assertion was allowed. 5 In the final analysis, however, an equitable estoppel rests upon the facts and circumstances of the particular case in which it is urged, 6 considered in the framework of the elements, requisites, and grounds of equitable estoppel, 7 and consequently, any attempted definition usually amounts to no more than a declaration of an estoppel under those facts and circumstances. 8 The cases themselves must be looked to and applied by way of analogy rather than rule. 9"*
> *[American Jurisprudence 2d, Estoppel and Waiver, §27: Definitions and Nature]*

> *"The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. 11 The doctrine of estoppel springs from equitable principles and the equities in the case. 12 It is designed to aid the law in the administration of justice where without its aid injustice might result. 13 Thus, the doctrine of equitable estoppel or estoppel in pais is founded upon principles of morality and fair dealing and is intended to subserve the ends of justice. 14 It always presupposes error on one side and fault or fraud upon the other and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage. 15 It concludes the truth in order to prevent fraud and falsehood and imposes silence on a party only when in conscience and honesty he should not be allowed to speak. 16*

> *The proper function of equitable estoppel is the prevention of fraud, actual or constructive, 17 and the doctrine should always be so applied as to promote the ends of justice and accomplish that which ought to be done between man and man. 18 Such an estoppel cannot arise against a party except when justice to the rights of others demands it 19 and when to refuse it would be inequitable. 20 The doctrine of estoppel should be applied cautiously and only when equity clearly requires it to be done. 1 Hence, in determining the application of the doctrine, the counterequities of the parties are entitled to due consideration. 2 It is available only in defense of a legal or equitable right or claim made in good faith and can never be asserted to uphold crime, fraud, injustice, or wrong of any character. 3 Estoppel is to be applied against wrongdoers, not against the victim of a wrong, 4 although estoppel is never employed as a means of inflicting punishment for an unlawful or wrongful act. 5"*
> *[American Jurisprudence 2d, Estoppel and Waiver, §28: Basis, function, and purpose]*

7 Resources for Further Study and Rebuttal

If you would like to study the subjects covered in this short pamphlet in further detail, may we recommend the following authoritative sources, and also welcome you to rebut any part of this pamphlet after your have read it and studied the subject carefully yourself just as we have:

1. *Federal Enforcement Authority Within States of the Union*, Form #05.032. Proves that the federal government may only enforce its laws on federal territory or against its own officers wherever situated. http://sedm.org/Forms/FormIndex.htm
2. *Why Statutory Civil Law is Law for Government and not Private Persons, Form #05.037*. Proves that nearly all federal law only applies to federal employees, officers, agents, and contractors and not private persons. http://sedm.org/Forms/FormIndex.htm
3. *Government Instituted Slavery Using Franchises*, Form #05.030. Proves that the government uses franchises to destroy your rights, and that the income tax is based on a voluntary, avoidable franchise.

http://sedm.org/Forms/FormIndex.htm

4. *IRS Due Process Meeting Handout*, Form #03.008: How to apply the concepts within this pamphlet to an IRS audit or examination
   http://sedm.org/Forms/FormIndex.htm
5. *Why Your Government is Either a Thief or You are a "Public Officer" for Income Tax Purposes*, Form #05.008. Shows that the real subject of the income tax are government officers and employees and not private persons. The income tax includes penalty provisions that may only be enforced against these types of officers, who are defined in 26 U.S.C. §6671(b) and 26 U.S.C. §6331(a).
   http://sedm.org/Forms/FormIndex.htm
6. *Liberty University*: Free educational materials for regaining your sovereignty as an entrepreneur or private human being
   http://sedm.org/LibertyU/LibertyU.htm
7. *Family Guardian Website, Taxes page*: Free website.
   http://famguardian.org/Subjects/Taxes/taxes.htm
8. *Great IRS Hoax*, Form #11.302: Free downloadable electronic book
   http://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm
9. *Sovereignty Forms and Instructions Online*, Form #10.004: Free references and tools to help those who want to escape federal slavery
   http://famguardian.org/TaxFreedom/FormsInstr.htm

8 Questions that Readers, Grand Jurors, and Petit Jurors Should be Asking the Government

These questions are provided for readers, Grand Jurors, and Petit Jurors to present to the government or anyone else who would challenge the facts and law appearing in this pamphlet, most of whom work for the government or stand to gain financially from perpetuating the fraud. If you find yourself in receipt of this pamphlet, you are demanded to answer the questions within 10 days. Pursuant to Federal Rule of Civil Procedure 8(b)(6), failure to deny within 10 days constitutes an admission to each question. Pursuant to 26 U.S.C. §6065, all of your answers must be signed under penalty of perjury. We are not interested in agency policy, but only sources of reasonable belief identified in the pamphlet below:

Reasonable Belief About Income Tax Liability, Form #05.007 http://sedm.org/Forms/FormIndex.htm

Your answers will become evidence in future litigation, should that be necessary in order to protect the rights of the person against whom you are attempting to unlawfully enforce federal law.

1. Admit that the U.S. Constitution, Article 1, Section 9, Clause 3, and Article 1, Section 10, Clause 1 prohibit what is called "Bills of Attainder":

   > *Article 1, Section 9, Clause 3: "No Bill of Attainder or ex post facto Law shall be passed." (with respect to the U.S. Congress)*
   >
   > *Article 1, Section 10, Clause 1: "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."*

   YOUR ANSWER: ____Admit ____Deny

   CLARIFICATION:_____

2. Admit that Bills of Attainder are defined as follows

   > *Bill of attainder: **Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial**. United States v. Brown, 381 U.S. 437, 448-49, 85 S.Ct. 1707, 1715, 14 L.Ed. 484, 492; United States v. Lovett, 328 U.S. 303, 315, 66 S.Ct. 1073, 1079, 90 L.Ed. 1252. An act is a "bill of attainder" when the punishment is death and a "bill of pains and penalties" when the punishment is less sever; **both kinds of***

punishment fall within the scope of the constitutional prohibition. U.S.Const. Art. I, Sect 9, Cl. 3 (as to Congress);' Art. I, Sec, 10 (as to state legislatures).
[Black's Law Dictionary, Sixth Edition, p. 165, Emphasis added]

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

3. Admit that any penalty instituted by the IRS against any natural person who has not contractual relationship, agency, or employment with the federal government constitutes a "Bill of Attainder" as legally defined.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

4. Admit that the term "person" as used in the context of all penalties under the Internal Revenue Code is defined in 26 U.S.C. §6671(b) as follows:

TITLE 26 > Subtitle F > CHAPTER 68 > Subchapter B > PART I > Sec. 6671.
Sec. 6671. - Rules for application of assessable penalties

(a) Penalty assessed as tax

The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

(b) Person defined

The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

5. Admit that the phrase above "who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs" implies the existence of agency, employment, fiduciary duty, or contractual arrangement with the federal government.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

6. Admit that voluntarily completing an IRS form W-4, according to the regulations at 26 CFR §31.3402(p)-1, creates a presumption that a duty exists to include all earnings in connection with the W-4 as "gross income" under 26 U.S.C. §61 on a tax return, and that therefore a fiduciary duty or agency is created by the submitter with the federal government:

Title 26: Internal Revenue
PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE
Subpart E—Collection of Income Tax at Source
§ 31.3402(p)-1 Voluntary withholding agreements.

(a) In general. An employee and his employer may enter into an agreement under section 3402(b) to provide for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of §31.3401(a)–3, made after December 31, 1970. ***An agreement may be entered into under this section only with respect to amounts which are includible in the gross income of the employee under section 61, and must be applicable to all such amounts paid by the employer to the employee.*** *The amount to be withheld pursuant to an agreement under section 3402(p) shall be determined under the rules contained in section 3402 and the regulations*

thereunder. See §31.3405(c)–1, Q&A–3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible rollover distributions within the meaning of section 402.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

7. Admit that where a tax liability under I.R.C. Subtitle A does NOT exist because no amounts were includible in "gross income" or the W-4 in question was submitted under the influence of duress from either the receiving employer or the IRS, the presumption of the existence of fiduciary duty is a rebuttable presumption.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

8. Admit that the presumption that the submitter of a W-4 is a federal "employee", as shown in the upper left corner of the W-4 form, or fiduciary may be rebutted by showing that the W-4 was submitted under the influence of duress, or upon submitting corrected W-2's correcting the amounts reported as "wages" in Block 1 of the W-2.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

9. Admit that the "United States" government is defined in 28 U.S.C. §3002(15)(A) as a "federal corporation":

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART VI - PARTICULAR PROCEEDINGS
CHAPTER 176 - FEDERAL DEBT COLLECTION PROCEDURE
SUBCHAPTER A - DEFINITIONS AND GENERAL PROVISIONS
Sec. 3002. Definitions

*(15) **"United States" means** -*
*(A) **a Federal corporation**;*
(B) an agency, department, commission, board, or other entity of the United States; or
(C) an instrumentality of the United States.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

10. Admit that a person holding "public office" in the "United States" is an officer of a "federal corporation" as defined in 28 U.S.C. §3002(15)(A):

Public Office
"Essential characteristics of a 'public office' are:
(1) Authority conferred by law,
(2) Fixed tenure of office, and
(3) Power to exercise some of the sovereign functions of government.
(4) Key element of such test is that "officer is carrying out a sovereign function'.
(5) Essential elements to establish public position as 'public office' are:
(a) Position must be created by Constitution, legislature, or through authority conferred by legislature.
(b) Portion of sovereign power of government must be delegated to position,
(c) Duties and powers must be defined, directly or implied, by legislature or through legislative authority.
(d) Duties must be performed independently without control of superior power other than law, and
(e) Position must have some permanency."
[Black's Law Dictionary, Abridged Sixth Edition, p. 1230]

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

11. Admit that a person holding "public office" in the "United States" is also engaged in an excise taxable activity called a "trade or business", as defined in 26 U.S.C. §7701(a)(26):

> *26 U.S.C. Sec. 7701(a)(26)*
>
> *"The term 'trade or business' includes the performance of the functions of a public office."*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

12. Admit that a person who files an IRS Form 1040NR (not 1040), and who has no income or earnings connected to a "trade or business" reported on a W-2 or 1099 cannot therefore be regarded as an "officer of a corporation" as defined in 26 U.S.C. §6671(b) and therefore cannot be subject o IRS penalties because not a "person" as defined under the penalty provisions of the I.R.C.:

> *TITLE 26 > Subtitle F > CHAPTER 68 > Subchapter B > PART I > Sec. 6671.*
> *Sec. 6671. - Rules for application of assessable penalties*
>
> *(a) Penalty assessed as tax*
>
> *The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.*
>
> ***(b) Person defined***
>
> ***The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs***

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

Affirmation:

I declare under penalty of perjury as required under 26 U.S.C. §6065 that the answers provided by me to the foregoing questions are true, correct, and complete to the best of my knowledge and ability, so help me God. I also declare that these answers are completely consistent with each other and with my understanding of both the Constitution of the United States, Internal Revenue Code, Treasury Regulations, the Internal Revenue Manual, and the rulings of the Supreme Court but not necessarily lower federal courts.

Name (print):_____

Signature:_____

Date:_____

Witness name (print):_____

Witness Signature:_____

Witness Date:_____